Journal of the Senate

State of Indiana

115th General Assembly — First Regular Session

Forty-eighth Meeting Day — Friday Afternoon — April 27, 2007

The Senate convened at 2:34 p.m., with the President of the Senate, Rebecca S. Skillman, in the Chair.

Prayer was offered by Senator Jean D. Breaux.

The Pledge of Allegiance to the Flag was led by the President of the Senate.

The Chair ordered the roll of the Senate to be called. Those present were:

Alting	Long
Arnold	Lubbers
Becker	Meeks ▶
Boots	Merritt
Bray	Miller
Breaux	Mishler
Broden	Mrvan
Deig	Nugent
Delph	Paul
Dillon	Riegsecker
Drozda	Rogers
Errington ▶	Simpson ▶
Ford	Sipes
Gard	Skinner
Heinold	Smith
Hershman	Steele
Howard	Tallian
Hume	Walker
Jackman	Waltz
Kenley	Waterman
Kruse	Weatherwax
Lanane	Wyss
Landske	Young, M.
Lawson	Young, R.
Lewis	Zakas

Roll Call 475: present 47; excused 3. [*Note: A ▶ indicates those who were excused.*] The Chair announced a quorum present. Pursuant to Senate Rule 5(d), no motion having been heard, the Journal of the previous day was considered read.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Pursuant to Senate Rule 83(j), your Committee on Rules and Legislative Procedure to which was referred Conference Committee Reports filed on Engrossed Senate Bills 550, 568, 103, 104, and 171, and Engrossed House Bills 1116, 1058, 1452, 1457, and 1663 has had the same under consideration and begs leave to report back to the Senate with the recommendation that said Conference Committee Reports are eligible for consideration.

LONG, Chair

Report adopted.

SENATE MOTION

Madam President: I move that Conference Committee Report #1 to Engrossed House Bill 1546, filed April 24, 2007, be withdrawn from further consideration by the Senate.

WYSS

Motion prevailed.

SENATE MOTION

Madam President: I move that the Senate rescind its action whereby it adopted the Motion to Dissent on Engrossed Senate Bill 211 and that said Motion be withdrawn.

FORD

Motion prevailed.

SENATE MOTION

Madam President: I move that Conference Committee Report #1 to Engrossed Senate Bill 330, filed April 26, 2007, be withdrawn from further consideration by the Senate.

LAWSON

Motion prevailed.

MOTIONS TO CONCUR IN HOUSE AMENDMENTS

SENATE MOTION

Madam President: I move that the Senate do concur with the House amendments to Engrossed Senate Bill 334.

HEINOLD

Roll Call 476: yeas 45, nays 2. Motion prevailed.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT

EHB 1058–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill 1058 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate

amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Page 4, delete lines 34 through 42, begin a new paragraph and insert:

"SECTION 3. IC 36-1-11-5.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5.7. (a) As used in this section, "political subdivision":**

(1) before July 1, 2008, does not include a township in a county having a consolidated city; and

(2) after June 30, 2008, refers to all political subdivisions.

(b) As used in this section, "volunteer fire department" has the meaning set forth in IC 36-8-12-2.

(c) Notwithstanding IC 5-22-22 and sections 4, 4.1, 4.2, and 5 of this chapter, a disposing agent of a political subdivision may sell or transfer:

(1) real property; or

(2) tangible or intangible personal property, licenses, or any interest in the tangible or intangible personal property or licenses;

without consideration or for a nominal consideration to a volunteer fire department for construction of a fire station or other purposes related to firefighting.".

Delete page 5.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1058 as printed March 23, 2007.)

Bischoff, Chair	Steele
Buck	Lewis
House Conferees	Senate Conferees

Roll Call 477: yeas 45, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

EHB 1116–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill 1116 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 20-28-5-3, AS ADDED BY P.L.246-2005, SECTION 157, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The department shall designate:

(1) the grade point average required for each type of license; and

(2) the types of licenses to which the teachers' minimum salary laws apply, including nonrenewable one (1) year limited licenses.

(b) The department shall determine details of licensing not provided in this chapter, including requirements regarding the following:

(1) The conversion of one (1) type of license into another.

(2) The accreditation of teacher education schools and departments.

(3) The exchange and renewal of licenses.

(4) The endorsement of another state's license.

(5) The acceptance of credentials from teacher education institutions of another state.

(6) The academic and professional preparation for each type of license.

(7) The granting of permission to teach a high school subject area related to the subject area for which the teacher holds a license.

(8) The issuance of licenses on credentials.

(9) The type of license required for each school position.

(10) The size requirements for an elementary school requiring a licensed principal.

(11) Any other related matters.

The department shall establish at least one (1) system for renewing a teaching license that does not require a graduate degree.

(c) After June 30, 2007, the department may not issue an initial teaching license at any grade level to an applicant for an initial teaching license unless the applicant shows evidence that the applicant:

(1) has successfully completed training approved by the department in:

(A) cardiopulmonary resuscitation that includes a test demonstration on a mannequin;

(B) removing a foreign body causing an obstruction in an airway; and

(C) the Heimlich maneuver;

(2) holds a valid certification in each of the procedures described in subdivision (1) issued by:

(A) the American Red Cross;

(B) the American Heart Association; or

(C) a comparable organization or institution approved by the advisory board; or

(3) has physical limitations that make it impracticable for the applicant to complete a course or certification described in subdivision (1) or (2).

~~(c)~~ **(d)**The department shall periodically publish bulletins regarding:

(1) the details described in subsection (b);

(2) information on the types of licenses issued;

(3) the rules governing the issuance of each type of license; and

(4) other similar matters.

SECTION 2. IC 20-34-5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 5. Care of Students With Diabetes

Sec. 1. As used in this chapter, "diabetes management and treatment plan" means a plan prepared under section 12 of this chapter.

Sec. 2. As used in this chapter, "health care services" has the meaning set forth in IC 27-8-11-1.

Sec. 3. As used in this chapter, "individualized health plan" means a coordinated plan of care designed to meet the unique health care needs of a student with diabetes in a school setting.

Sec. 4. As used in this chapter, "licensed health care practitioner" means an individual who:

(1) is licensed to provide health care services; and

(2) has prescriptive authority;

under IC 25.

Sec. 5. As used in this chapter, "physician" refers to an individual who is licensed under IC 25-22.5.

Sec. 6. As used in this chapter, "registered nurse" refers to an individual who is licensed as a registered nurse under IC 25-23.

Sec. 7. As used in this chapter, "school" refers to a public school, including a charter school.

Sec. 8. As used in this chapter, "school employee" means an individual employed by:

(1) a public school, including a charter school, or an accredited nonpublic school;

(2) a local health department working with a school under this chapter; or

(3) another entity with which a school has contracted to perform the duties required under this chapter.

Sec. 9. As used in this chapter, "school nurse" refers to an individual who:

(1) is employed by a school;

(2) is licensed as a registered nurse under IC 25-23; and

(3) meets the requirements set forth in 515 IAC 8-1-47.

Sec. 10. As used in this chapter, "student" refers to a student with diabetes.

Sec. 11. As used in this chapter, "volunteer health aide" means a school employee who:

(1) is not licensed or authorized to provide health care services under IC 25;

(2) volunteers to act in the capacity of a volunteer health aide; and

(3) has successfully completed the training described in section 14 of this chapter.

Sec. 12. (a) A diabetes management and treatment plan must be prepared and implemented for a student with diabetes for use during school hours or at a school related activity. The plan must be developed by:

(1) the licensed health care practitioner responsible for the student's diabetes treatment; and

(2) the student's parent or legal guardian.

(b) A diabetes management and treatment plan must:

(1) identify the health care services or procedures the student should receive at school;

(2) evaluate the student's:

(A) ability to manage; and

(B) level of understanding of;

the student's diabetes; and

(3) be signed by the student's parent or legal guardian and the licensed health care practitioner responsible for the student's diabetes treatment.

(c) The parent or legal guardian of a student with diabetes shall submit a copy of the student's diabetes management and treatment plan to the school nurse. The plan must be submitted to and be reviewed by the school nurse:

(1) before or at the beginning of a school year;

(2) at the time the student enrolls, if the student is enrolled in school after the beginning of the school year; or

(3) as soon as practicable following a diagnosis of diabetes for the student.

Sec. 13. (a) An individualized health plan must be developed for each student with diabetes while the student is at school or participating in a school activity. The school's nurse shall develop a student's individualized health plan in collaboration with:

(1) to the extent practicable, the licensed health care practitioner responsible for the student's diabetes treatment;

(2) the school principal;

(3) the student's parent or legal guardian; and

(4) one (1) or more of the student's teachers.

(b) A student's individualized health plan must incorporate the components of the student's diabetes management and treatment plan.

Sec. 14. (a) At each school in which a student with diabetes is enrolled, the school principal, after consultation with the school nurse, shall:

(1) seek school employees to serve as volunteer health aides; and

(2) make efforts to ensure that the school has an adequate number of volunteer health aides to care for students.

(b) A volunteer health aide, while providing health care services, serves under the supervision and authorization of the principal and the school nurse in accordance with the requirements that apply to the school nurse under IC 25-23.

(c) A volunteer health aide must have access to the school nurse, in person or by telephone, during the hours that the volunteer health aide serves as a volunteer health aide.

(d) A school employee may not be subject to any disciplinary action for refusing to serve as a volunteer health aide. The school shall inform school employees that participation as a volunteer health aide is voluntary. A school employee who volunteers as a volunteer health aide may elect to perform only those functions that the school employee:

(1) chooses to perform; and

(2) is trained to perform in the training program described in section 15 of this chapter.

Sec. 15. (a) The department may cooperate with the state department of health in the development of a diabetes training program for school nurses. The department, with the assistance of physicians or registered nurses who are qualified in the area of diabetes training, shall provide annual diabetes training programs to school nurses. The training must include technological advances, current standards of practice for diabetes management and training, and instruction in the following:

(1) Developing individualized health plans for students with diabetes that follow the orders of a licensed health care practitioner.

(2) Recognizing and treating the symptoms of hypoglycemia and hyperglycemia.

(3) Understanding the current standards of practice and the proper action to take if the blood glucose levels of a student are outside the target ranges indicated on the student's diabetes management and treatment plan.

(4) Performing tests to check glucose and ketone levels, and recording the results.

(5) Properly administering glucagon, insulin, or other emergency treatments prescribed by the licensed health care practitioner, and recording the results.

(6) Recognizing complications that require emergency medical assistance.

(7) Understanding recommended schedules and food intake for meals and snacks for a student, the effect of physical activity on blood glucose levels, and the proper action to be taken if a student's schedule referred to in this subdivision is disrupted.

(b) The department may cooperate with the state department of health in the development of a diabetes training program for volunteer health aides. The department, with the assistance of physicians and registered nurses who are qualified in the area of diabetes training, shall provide a diabetes training program for volunteer health aides which includes the most current standards of practice and technology for diabetes treatment. The training must include the following:

(1) Implementing the orders of a licensed health care practitioner.

(2) Recognizing and treating the symptoms of hypoglycemia and hyperglycemia consistent with the orders of the licensed health care practitioner.

(3) Performing tests to check glucose and ketone levels, and recording the results.

(4) Properly administering glucagon, insulin, or other emergency treatments as prescribed, and recording the results.

(5) Recognizing complications that require emergency medical assistance.

(6) Understanding:

(A) recommended schedules and food intake for meals and snacks;

(B) the effect of physical activity on blood glucose levels; and

(C) the proper action to be taken if a student's schedule is disrupted.

(c) The school nurse shall coordinate:

(1) the training of school employees acting as volunteer health aides, using the training program developed under subsection (b); and

(2) the record keeping and monitoring of a volunteer health aide acting under this chapter.

(d) Training for volunteer health aides must be provided by a health care professional with expertise in the care of individuals with diabetes or by a school nurse. The training must be provided before the beginning of the school year or as soon as practicable following:

(1) the enrollment; or

(2) the diagnosis;

of a student with diabetes at a school that previously had no students with diabetes.

(e) The school nurse or principal shall maintain a copy of the training program and the records of training completed by school employees.

Sec. 16. (a) The school nurse shall perform the tasks necessary to assist a student in carrying out the student's individualized health plan.

(b) When necessary, a volunteer health aide may perform the tasks necessary to assist a student in carrying out the student's individualized health plan, in compliance with the training guidelines provided under section 15 of this chapter.

(c) A volunteer health aide may act under this section only if the parent or legal guardian of the student signs an agreement that:

(1) authorizes a volunteer health aide to assist the student; and

(2) states that the parent or legal guardian understands that, as provided under IC 34-30-14, a volunteer health aide is not liable for civil damages for assisting in the student's care.

(d) A volunteer health aide who assists a student under this section:

(1) is not considered to be engaging in the practice of nursing; and

(2) is exempt from applicable statutes and rules that restrict activities that may be performed by an individual who is not an individual licensed or authorized under IC 25 to provide health care services.

(e) A school corporation may not restrict the assignment of a student to a particular school on the sole basis of whether the school has volunteer health aides.

Sec. 17. (a) As provided in a student's individualized health plan, a school shall, except in an emergency, allow the student to attend to the management and care of the student's diabetes if the student has been evaluated and determined to be capable of doing so as reflected in the student's individual health plan and the student's diabetes management and treatment plan, including the following activities:

(1) Performing blood glucose level checks.

(2) Administering insulin through the insulin delivery system the student uses.

(3) Treating hypoglycemia and hyperglycemia.

(4) Possessing on the student's person at any time the supplies or equipment necessary to monitor and care for the student's diabetes.

(5) Otherwise attending to the management and care of the student's diabetes in the classroom, in any area of the school or school grounds, or at any school related activity.

(b) The school nurse shall, in accordance with the requirements that apply to the school nurse under IC 25-23, establish a procedure through which a student described in subsection (a) is cared for in an emergency.

Sec. 18. A school shall provide the individual who is responsible for providing transportation for or supervising a student with diabetes during an off-campus school related activity an information sheet that:

(1) identifies the student with diabetes;

(2) identifies potential emergencies that may occur as a result of the diabetes and appropriate responses to an emergency; and

(3) provides the telephone number of a contact in case an emergency occurs.

SECTION 3. IC 34-6-2-15.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 15.7. "Basic life support" has the meaning set forth in IC 16-18-2-33.5.**

SECTION 4. IC 34-30-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. A school or school board may not:

(1) require a teacher or other school employee who is not employed as a school nurse or physician to administer:

(A) medication, drugs, or tests described in section 2 of this chapter; or

(B) health care services, basic life support, or other services that require the teacher or employee to place the teacher's or employee's hands on a pupil for therapeutic or sanitary purposes; or

(2) discipline a teacher or other school employee who:

(A) is not employed as a school nurse or physician; and

(B) refuses to administer medication, drugs, or tests without the written:

(i) authority of a pupil's parent or guardian; or

(ii) order of a practitioner;

required under section 2 of this chapter; **or**

(C) refuses to administer health care services, basic life support, or other services that require the teacher or employee to place the teacher's or employee's hands on a pupil for therapeutic or sanitary purposes.

SECTION 5. IC 34-30-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. If compliance with sections 3 and 4 of this chapter has occurred, a school administrator, teacher, or other school employee designated by the school administrator, after consultation with the school nurse, who in good faith administers **to a pupil:**

(1) a nonprescription medication in compliance with the written permission of the pupil's parent or guardian, except in the case of a life threatening emergency;

(2) a legend drug (as defined in IC 16-18-2-199 and including injectable insulin) in compliance with the:

(A) written order of a practitioner; and

(B) written permission of the pupil's parent or guardian, except in the case of a life threatening emergency;

(3) a ~~blood~~ glucose test ~~by finger prick~~ in compliance with the written order of a practitioner; ~~or~~

(4) health care services, basic life support, or other services that require the administrator, teacher, or employee to place the administrator's, teacher's, or employee's hands on the pupil for therapeutic or sanitary purposes; or

~~(4)~~ **(5)** any combination of subdivisions (1) through ~~(3);~~ **(4);**

~~to a pupil~~ is not **personally** liable for civil damages **for any act that is incident to or within the scope of the duties of the employee** as a result of the administration except for an act or omission amounting to gross negligence or willful and wanton misconduct.

SECTION 6. IC 34-30-14-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. A teacher:**

(1) who meets the requirement of IC 20-28-5-3(c); and

(2) who:

(A) performs cardiopulmonary resuscitation on;

(B) performs the Heimlich maneuver on; or

(C) removes a foreign body that is obstructing an airway of;

another person, in the course of employment as a teacher; is not liable in a civil action for damages resulting from an act or omission occurring during the provision of emergency assistance under this section, unless the act or omission constitutes gross negligence or willful and wanton misconduct.

SECTION 7. [EFFECTIVE UPON PASSAGE] **(a) Although IC 20-28-5-3(c), as amended by this act, applies beginning July 1, 2007, a college or university located in Indiana may recommend to a person who has been accepted in a teacher training program before July 1, 2007, that the person should meet the requirements of IC 20-28-5-3(c), as amended by this act.**

(b) This SECTION expires June 30, 2009.

SECTION 8. [EFFECTIVE JULY 1, 2007] **(a) As used in this SECTION, "ADM" refers to a school corporation's average daily membership determined under IC 20-43-4-2.**

(b) As used in this SECTION, "school corporation" means a public school corporation established by Indiana law. The term includes a:

(1) school city;

(2) school town;

(3) school township;

(4) consolidated school corporation;

(5) metropolitan school district;

(6) township school corporation;

(7) county school corporation;

(8) united school corporation; or

(9) community school corporation.

(c) On the date a school corporation reports the school corporation's ADM for the 2007-2008 school year, the school corporation shall also report:

(1) the number of students in the school corporation who have a chronic disease, by disease category; and

(2) the number of school nurses.

Chronic disease includes asthma, diabetes, and any other disease the department of education determines is significant for the school corporation to report.

(d) The department of education shall provide the information required to be reported in subsection (c) to the health finance commission established by IC 2-5-23-3 not later than sixty (60) days after the department of education receives the reported information.

(e) This SECTION expires June 30, 2008.

SECTION 9. [EFFECTIVE JULY 1, 2007] **(a) Notwithstanding IC 20-28-5-3(c), as amended by this act, the requirements set forth in IC 20-28-5-3(c) do not apply to an applicant who has received an initial teaching license at any grade level before August 1, 2007, and who seeks initial employment as a teacher under that license for the 2007-2008**

school year.

(b) This SECTION expires June 30, 2008.

SECTION 10. **An emergency is declared for this act.**

(Reference is to EHB 1116 as reprinted April 6, 2007.)

Cheatham, Chair	Landske
Duncan	Rogers
House Conferees	Senate Conferees

Roll Call 478: yeas 43, nays 2. Report adopted.

CONFERENCE COMMITTEE REPORT
EHB 1452–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill 1452 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 16-39-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. A provider may not charge a person for making and providing copies of medical records an amount greater than ~~provided in this chapter.~~ **the amount set in rules adopted by the department of insurance under section 4 of this chapter.**

SECTION 2. IC 16-39-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) As used in this section, "department" refers to the department of insurance created by IC 27-1-1-1.

(b) ~~Notwithstanding sections 1 and 2 of this chapter,~~ The department may adopt rules under IC 4-22-2 to ~~adjust~~ **set** the amounts that may be charged for copying records under this chapter. In adopting rules under this section, the department shall consider the following factors relating to the costs of copying medical records:

(1) The following labor costs:
(A) Verification of requests.
(B) Logging requests.
(C) Retrieval.
(D) Copying.
(E) Refiling.
(2) Software costs for logging requests.
(3) Expense costs for copying.
(4) Capital costs for copying.
(5) Billing and bad debt expenses.
(6) Space costs.

SECTION 3. IC 16-47-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The ~~following~~ **department** shall participate in the program

~~(1) The department,~~ for a health benefit plan:

~~(A)~~ **(1)** described in section 2(1), 2(2), or 2(3) of this chapter; and

~~(B)~~ **(2)** that provides coverage for prescription drugs.

~~(2) A state educational institution, for a health benefit plan:~~

~~(A) described in section 2(4) of this chapter; and~~

~~(B) that provides coverage for prescription drugs;~~

~~unless the budget agency determines that the state educational institution's participation in the program would not result in an overall financial benefit to the state educational institution.~~

(b) The following may participate in the program:

(1) A state agency other than the department that:
(A) purchases prescription drugs; or
(B) arranges for the payment of the cost of prescription drugs.
(2) A local unit (as defined in IC 5-10-8-1).
(3) The Indiana comprehensive health insurance association established under IC 27-8-10.

(4) A state educational institution for a health benefit plan:

(A) described in section 2(4) of this chapter; and

(B) that provides coverage for prescription drugs.

(c) The state Medicaid program may not participate in the program under this chapter.

SECTION 4. IC 20-12-22.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 22.3. Insurance Education Scholarship Fund

Sec. 1. As used in this chapter, "commission" refers to the state student assistance commission established by IC 20-12-21-4.

Sec. 2. As used in this chapter, "fund" refers to the insurance education scholarship fund established by section 5 of this chapter.

Sec. 3. As used in this chapter, "insurance student" means a student who studies or intends to study:

(1) insurance; or

(2) business with an emphasis on insurance.

Sec. 4. As used in this chapter,"state educational institution" has the meaning set forth in IC 20-12-0.5-1.

Sec. 5. (a) The insurance education scholarship fund is established to encourage and promote qualified individuals to pursue a career in insurance in Indiana.

(b) The fund consists of amounts deposited under IC 27-1-15.6-7.3.

Sec. 6. (a) The commission shall administer the fund.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from the investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 7. (a) The money in the fund shall be used to provide annual scholarships to insurance students who qualify under section 9 of this chapter. The commission shall determine the amount of money to be allocated from the fund for scholarships under this chapter.

(b) A scholarship awarded under this chapter may be used only for the payment of tuition or fees that are:

(1) approved by the state educational institution that awards the scholarship; and

(2) not otherwise payable under any other scholarship or form of financial assistance specifically designated for tuition or fees.

(c) Subject to section 8(c) of this chapter, each scholarship awarded under this chapter is renewable under section 9 of this chapter for a total number of terms that does not exceed eight (8) full-time semesters (or the equivalent) or twelve (12) full-time quarters (or the equivalent).

Sec. 8. (a) The commission for higher education shall provide the commission with the most recent information concerning the number of insurance students at each state educational institution.

(b) The commission shall allocate the available money from the fund to each state educational institution that has:

(1) an insurance program; or

(2) a business program with an emphasis on insurance;

in proportion to the number of insurance students enrolled at each state educational institution based upon the information received by the commission under subsection (a).

(c) Each state educational institution shall determine which of the state educational institution's insurance students who apply qualify under section 9 of this chapter. In addition, the state educational institution shall consider the need of the applicant when awarding scholarships under this chapter.

(d) The state educational institution may not grant a scholarship renewal to an insurance student for an academic year that ends later than six (6) years after the date on which the insurance student received the insurance student's initial scholarship under this chapter.

(e) Any funds that:

(1) are allocated to a state educational institution under section 8(b) of this chapter; and

(2) are not used for scholarships under this chapter;

shall be returned to the commission for reallocation by the commission to any other eligible state educational institution in need of additional funds.

Sec. 9. To qualify for a scholarship or a scholarship renewal from the fund, an insurance student must:

(1) be admitted to an approved state educational institution as a full-time or part-time insurance student; and

(2) meet the qualifications established by the commission under section 11 of this chapter.

Sec. 10. (a) The commission shall maintain complete and accurate records in administering the fund, including records concerning the scholarships awarded under this chapter.

(b) Each state educational institution shall provide the commission with information concerning the following:

(1) The awarding of scholarships under this chapter.

(2) The academic progress made by each recipient of a scholarship under this chapter.

(3) Other pertinent information requested by the commission.

Sec. 11. (a) The commission shall adopt rules under subsection (b) to establish qualifications for recipients of scholarships and scholarship renewals under this chapter.

(b) The commission shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 5. IC 22-3-3-13, AS AMENDED BY P.L.134-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice not later than November 1 in any year to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk;

stating that an assessment is necessary. Not later than January 31 of the following year, each entity identified in subdivisions (1) and (2) shall send to the board a statement of total paid losses and premiums (as defined in subsection (d)(4)) paid by employers during the previous calendar year. The board may conduct an assessment under this subsection not more than one (1) time annually. The total amount of the assessment may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. The board shall assess a penalty in the amount of ten percent (10%) of the amount owed if payment is not made under this section within thirty (30) days from the date set by the board. If the amount to the credit of the second injury fund on or before November 1 of any year exceeds one hundred thirty-five percent (135%) of the previous year's disbursements, the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before November 1 of any year the amount to the credit of the fund is less than one hundred thirty-five percent (135%) of the previous year's disbursements, the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.

(d) The board shall assess all employers for the liabilities,

including administrative expenses, of the second injury fund. The assessment also must provide for the repayment of all loans made to the second injury fund for the purpose of paying valid claims. The following applies to assessments under this subsection:

(1) The portion of the total amount that must be collected from self-insured employers equals:

(A) the total amount of the assessment as determined by the board; multiplied by

(B) the quotient of:

(i) the total paid losses on behalf of all self-insured employers during the preceding calendar year; divided by

(ii) the total paid losses on behalf of all self-insured employers and insured employers during the preceding calendar year.

(2) The portion of the total amount that must be collected from insured employers equals:

(A) the total amount of the assessment as determined by the board; multiplied by

(B) the quotient of:

(i) the total paid losses on behalf of all insured employers during the preceding calendar year; divided by

(ii) the total paid losses on behalf of all self-insured employers and insured employers during the preceding calendar year.

(3) The total amount of **insured employer** assessments ~~allocated to insured employers~~ under subdivision (2) must be be collected by the insured employers' worker's compensation insurers. The amount of ~~the assessment for~~ **employer assessments** each ~~insured employer~~ **insurer shall collect** equals:

(A) the total amount of assessments allocated to insured employers under subdivision ~~(3),~~ **(2);** multiplied by

(B) the quotient of:

(i) the worker's compensation premiums paid by ~~the insured employer~~ **employers to the carrier** during the preceding calendar year; divided by

(ii) the worker's compensation premiums paid by **employers to** all ~~insured employers~~ **carriers** during the preceding calendar year.

(4) For purposes of the computation made under subdivision (3), "premium" means the ~~entire written premium resulting from standard rating procedures and before the application of any of the following:~~

~~(A) Rate deviations.~~

~~(B) Premium discounts.~~

~~(C) Policyholder dividends.~~

~~(D) Premium adjustments under a retrospective rating plan.~~

~~(E) Premium credits provided under large deductible programs.~~

~~(F) Any other premium debits or credits.~~ **direct written premium.**

(5) The amount of the assessment for each self-insured employer equals:

(A) the total amount of assessments allocated to self-insured employers under subdivision (1); multiplied by

(B) the quotient of:

(i) the paid losses attributable to the self-insured employer during the preceding calendar year; divided by

(ii) paid losses attributable to all self-insured employers during the preceding calendar year.

An employer that has ceased to be a self-insurer continues to be liable for prorated assessments based on paid losses made by the employer in the preceding calendar year during the period that the employer was self-insured.

(e) The board may employ a qualified employee or enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than December 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(f) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of insurance producer commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(g) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(h) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

(1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or

(2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this section, as follows under subsection (i).

(i) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%)

of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(j) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(k) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 6. IC 27-1-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. (a) Except as provided in subsection ~~(g)~~ **(h),** the commissioner shall collect the following filing fees:

Document	Fee
Articles of incorporation	$ 350
Amendment of articles of incorporation	$ 10
Filing of annual statement and consolidated statement	$ 100
Annual renewal of company license fee	$ 50
Withdrawal of certificate of authority	$ 25
Certified statement of condition	$ 5
Any other document required to be filed by this article	$ 25

The commissioner shall deposit fees collected under this subsection into the department of insurance fund established by section 28 of this chapter.

(b) The commissioner shall collect a fee of ten dollars ($10) each time process is served on the commissioner under this title.

(c) The commissioner shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

Per page for copying	As determined by the commissioner but not to exceed actual cost
For the certificate	$10

(d) Each domestic and foreign insurer **and each health maintenance organization** shall remit annually to the commissioner for deposit into the department of insurance fund established by ~~IC 27-1-3-28~~ ~~three hundred fifty~~ **section 28 of this chapter one thousand** dollars ~~($350)~~ **($1,000)** as an internal audit fee. All assessment insurers, farm mutuals, **and** fraternal benefit societies ~~and health maintenance organizations~~ shall remit to the commissioner for deposit into the department of insurance fund ~~one~~ **two** hundred **fifty** dollars ~~($100)~~ **($250)** annually as an internal audit fee.

(e) Beginning July 1, 1994, each insurer shall remit to the commissioner for deposit into the department of insurance fund established by ~~IC 27-1-3-28~~ **section 28 of this chapter** a fee of thirty-five dollars ($35) for each policy, rider, ~~and~~ **rule, rate, or** endorsement filed with the state, **including subsequent filings. Except as provided in subsection (f), each policy, rider, rule, rate, or endorsement that is filed as part of a particular product filing or in association with a particular product filing is an individual filing subject to the fee under this subsection.** However, ~~each policy, rider, and endorsement filed as part of a particular product filing and associated with that product filing shall be considered to be a single filing and subject only to one (1) thirty-five dollar ($35) fee.~~ **the total amount of fees paid under this subsection by each insurer for a particular product filing may not exceed one thousand dollars ($1,000).**

(f) Beginning July 1, 2009, a policy, rider, rule, rate, or endorsement that is filed as part of a particular product filing or in association with a particular product filing for a commercial product described in:

(1) Class 2(b), Class 2(c), Class 2(d), Class 2(e), Class 2(f), Class 2(g), Class 2(h), Class 2(i), Class 2(j), Class 2(k), Class 2(l), or Class 2(m) of IC 27-1-5-1; or

(2) Class 3 of IC 27-1-5-1;

is considered to be part of a single filing for which the insurer is subject only to one (1) thirty-five dollar ($35) fee under subsection (e).

~~(f)~~ **(g)** The commissioner shall pay into the state general fund by the end of each calendar month the amounts collected during that month under subsections ~~(a),~~ (b) and (c).

~~(g)~~ **(h)** The commissioner may not collect fees for quarterly statements filed under IC 27-1-20-33.

~~(h)~~ **(i)** The commissioner may adopt rules under IC 4-22-2 to provide for the accrual and quarterly billing of fees under this section.

SECTION 7. IC 27-1-3-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 28. (a) The department of insurance fund is established for the following purposes:

(1) To provide supplemental funding for the operations of the department of insurance.

(2) To pay the costs of hiring and employing staff.

(3) To provide staff salary differentials as necessary to equalize the average salaries and staffing levels of the department of insurance with the average salaries and staffing levels reported in the most recent Insurance Department Resources Report published by the National Association of Insurance Commissioners.

(4) To enable the department of insurance to maintain accreditation by the National Association of Insurance

Commissioners.

(5) To carry out any other purpose determined necessary by the department of insurance to carry out the department's duties under this title.

(b) The fund shall be administered by the commissioner. The following shall be deposited in the department of insurance fund:

(1) Audit fees remitted by insurers to the commissioner under ~~IC 27-1-3-15(d).~~ **section 15(d) of this chapter.**

(2) Filing fees remitted by insurers to the commissioner under ~~IC 27-1-3-15(c).~~ **section 15(a) or 15(e) of this chapter.**

(3) Any other amounts remitted to the commissioner or the department that are required by rule or statute to be deposited into the department of insurance fund.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) Money in the fund at the end of a particular fiscal year does not revert to the state general fund.

(f) There is annually appropriated to the department of insurance, for the purposes set forth in subsection (a), the entire amount of money deposited in the fund in each year.

SECTION 8. IC 27-1-12.7-10, AS AMENDED BY P.L.193-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. Notwithstanding any other provision of law:

(1) the commissioner has the sole authority to regulate the issuance and sale of funding agreements;

(2) a funding agreement is not considered a covered policy under IC 27-8-8-1(a) or IC 27-8-8-2.3(d); ~~and~~

(3) a claim for payments under a funding agreement must be treated as a loss claim described in Class 2 of IC 27-9-3-40; **and**

(4) assets supporting a funding agreement in a segregated asset account under section 8 of this chapter are subject to IC 27-9-3-40.5 and Class 1(c) of IC 27-1-5-1.

SECTION 9. IC 27-1-13-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 16. (a) This section applies to a policy of insurance that:**

(1) covers first party loss to property located in Indiana; and

(2) insures against loss or damage to:

(A) real property consisting of not more than four (4) residential units, one (1) of which is the principal place of residence of the named insured; or

(B) personal property in which the named insured has an insurable interest and that is used within a residential dwelling for personal, family, or household purposes.

(b) An insurer that reduces, restricts, or removes, through a rider or an endorsement, coverage provided by a policy of insurance must provide to the named insured written notice, through the United States mail or by electronic means, of the changes to the policy. The written notice required by this subdivision must:

(1) be part of a document that is separate from the rider or endorsement;

(2) be printed in at least 12 point type, 1 point leaded;

(3) consist of text that achieves a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner as provided by IC 27-1-26-6;

(4) identify the forms, provisions, or endorsements that are changed;

(5) indicate the name and contact information of:

(A) the servicing insurance producer for the policy, if any; and

(B) the insurer;

whom the named insured may contact for assistance with any questions concerning the policy changes;

(6) indicate whether a premium adjustment will result from the policy changes; and

(7) set forth any options available to the named insured to repurchase the coverage that has been reduced, restricted, or removed.

(c) If the notice required under subsection (b) is sent through the United States mail, the outside of the envelope used to mail the notice must contain the following statement in at least 14 point type: "Coverage has been reduced, restricted, or removed from your policy.".

(d) The insurer bears the burden to prove that notice was sent to the named insured in accordance with this section. If the notice is sent through the United States mail, proof of mailing as described in IC 27-7-6-7 is sufficient proof of the notice.

(e) The commissioner may adopt rules under IC 4-22-2 to implement this section.

SECTION 10. IC 27-1-13-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 17. (a) This section applies to a policy of insurance that:**

(1) covers first party loss to property located in Indiana; and

(2) insures against loss or damage to:

(A) real property consisting of not more than four (4) residential units, one (1) of which is the principal place of residence of the named insured; or

(B) personal property in which the named insured has an insurable interest and that is used within a residential dwelling for personal, family, or household purposes.

(b) A policy of insurance described in subsection (a) may not be issued, renewed, or delivered to any person in Indiana if the policy limits a policyholder's right to bring an action against an insurer to a period of less than two (2) years from the date of loss.

SECTION 11. IC 27-1-15.6-7.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7.3. (a) The commissioner may design or have designed an insurance producer certificate suitable for framing and display.**

(b) Upon request of an insurance producer, the commissioner may issue a certificate described in subsection (a).

(c) The commissioner may impose and collect a reasonable fee for a certificate issued under subsection (b). The commissioner shall deposit fees collected under this subsection into the insurance education scholarship fund established by IC 20-12-22.3-5.

(d) The commissioner shall establish guidelines to implement this section.

SECTION 12. IC 27-1-15.6-24.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 24.1. A licensed insurance producer may charge a reasonable fee for personal lines property and casualty insurance or services related to personal lines property and casualty insurance subject to the following requirements:**

(1) The amount of a fee and the basis for calculating a fee may not vary among personal lines insureds.

(2) The amount of a fee is subject to the approval of the commissioner.

SECTION 13. IC 27-1-15.6-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 32. (a) The department shall adopt rules under IC 4-22-2 to set fees for licensure under this chapter, IC 27-1-15.7, and IC 27-1-15.8.

(b) Insurance producer and limited lines producer license renewal fees are due every ~~four (4)~~ **two (2)** years. The fee charged by the department every ~~four (4)~~ **two (2)** years for a:

(1) resident license is forty dollars ($40); and

(2) nonresident license is ninety dollars ($90).

(c) Consultant renewal fees are due every twenty-four (24) months.

(d) Surplus lines producer renewal fees are due ~~annually.~~ **every two (2) years. The fee charged by the department every two (2) years for a:**

(1) resident license is eighty dollars ($80); and

(2) nonresident license is one hundred twenty dollars ($120).

(e) The commissioner may issue a duplicate license for any license issued under this chapter. The fee charged by the commissioner for the issuance of a duplicate:

(1) insurance producer license;

(2) surplus lines producer license;

(3) limited lines producer license; or

(4) consultant license;

may not exceed ten dollars ($10).

(f) A fee charged and collected under this section shall be deposited into the department of insurance fund established by IC 27-1-3-28.

SECTION 14. IC 27-1-15.7-2, AS AMENDED BY P.L.73-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Except as provided in subsection (b), to renew a license issued under IC 27-1-15.6:

(1) a resident insurance producer must complete at least ~~forty (40)~~ **twenty (20)** hours of credit in continuing education courses; and

(2) a resident limited lines producer must complete at least ~~ten (10)~~ **five (5)** hours of credit in continuing education courses.

An attorney in good standing who is admitted to the practice of law in Indiana and holds a license issued under IC 27-1-15.6 may complete all or any number of hours of continuing education required by this subsection by completing an equivalent number of hours in continuing legal education courses that are related to the business of insurance.

(b) To renew a license issued under IC 27-1-15.6, a limited lines producer with a title qualification under IC 27-1-15.6-7(a)(8) must complete at least ~~fourteen (14)~~ **seven (7)** hours of credit in continuing education courses related to the business of title insurance with at least one (1) hour of instruction in a structured setting or comparable self-study in each of the following:

(1) Ethical practices in the marketing and selling of title insurance.

(2) Title insurance underwriting.

(3) Escrow issues.

(4) Principles of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2608).

An attorney in good standing who is admitted to the practice of law in Indiana and holds a license issued under IC 27-1-15.6 with a title qualification under IC 27-1-15.6-7(a)(8) may complete all or any number of hours of continuing education required by this subsection by completing an equivalent number of hours in continuing legal education courses related to the business of title insurance or any aspect of real property law.

(c) The following insurance producers are not required to complete continuing education courses to renew a license under this chapter:

(1) A limited lines producer who is licensed without examination under IC 27-1-15.6-18(1) or IC 27-1-15.6-18(2).

(2) A limited line credit insurance producer.

(3) An insurance producer who is at least seventy (70) years of age and has been a licensed insurance producer continuously for at least twenty (20) years immediately preceding the license renewal date.

(d) To satisfy the requirements of subsection (a) or (b), a licensee may use only those credit hours earned in continuing education courses completed by the licensee:

(1) after the effective date of the licensee's last renewal of a license under this chapter; or

(2) if the licensee is renewing a license for the first time, after the date on which the licensee was issued the license under this chapter.

(e) If an insurance producer receives qualification for a license in more than one (1) line of authority under IC 27-1-15.6, the insurance producer may not be required to complete a total of more than ~~forty (40)~~ **twenty (20)** hours of credit in continuing education courses to renew the license.

(f) Except as provided in subsection (g), a licensee may receive credit only for completing continuing education courses that have been approved by the commissioner under section 4 of this chapter.

(g) A licensee who teaches a course approved by the commissioner under section 4 of this chapter shall receive continuing education credit for teaching the course.

(h) When a licensee renews a license issued under this chapter, the licensee must submit:

(1) a continuing education statement that:

(A) is in a format authorized by the commissioner;

(B) is signed by the licensee under oath; and

(C) lists the continuing education courses completed by the licensee to satisfy the continuing education requirements of this section; and

(2) any other information required by the commissioner.

(i) A continuing education statement submitted under subsection (h) may be reviewed and audited by the department.

(j) A licensee shall retain a copy of the original certificate of completion received by the licensee for completion of a continuing education course.

(k) A licensee who completes a continuing education course that:

(1) is approved by the commissioner under section 4 of this chapter;

(2) is held in a classroom setting; and

(3) concerns ethics;

shall receive continuing education credit for the number of hours for which the course is approved plus additional hours, not to exceed two (2) hours in a renewal period, equal to the number of hours for which the course is approved.

SECTION 15. IC 27-1-15.8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. ~~(a) During the period that a resident surplus lines producer's license is in effect, the licensee shall keep in force a bond in the penal sum of not less than twenty thousand dollars ($20,000) with an authorized corporate surety approved by the commissioner. The aggregate liability of the surety for any and all claims on a bond does not exceed the penal sum of the bond. A bond may not be terminated unless written notice of termination is provided by the surety to the licensee and the commissioner not less than thirty (30) days before termination. Upon termination of a resident license for which a bond was in effect, the commissioner shall notify the surety of the termination within ten (10) business days. All surety protection under this section inures to the benefit of the state of Indiana to assure the payment of all premium taxes.~~

~~(b) A resident surplus lines producer shall, at the time of an initial filing under subsection (c), file with the commissioner proof of the bond in the amount required under subsection (a). In each subsequent calendar year, the resident surplus lines producer shall file proof that the bond remains in effect. A subsequent filing under this subsection shall be made in conjunction with the annual filing required under subsection (c).~~

~~(c)~~ **(a)** In addition to all other charges, fees, and taxes that may be imposed by law, a surplus lines producer licensed under this chapter shall, on or before February 1 and August 1 of each year, collect from the insured and remit to the department for the use and benefit of the state of Indiana an amount equal to two and one-half percent (2 1/2%) of all gross premiums upon all policies and contracts procured by the surplus lines producer under the provisions of this section during the preceding six (6) month period ending December 31 and June 30, respectively. The declarations page of a policy referred to in this subsection must itemize the amounts of all charges for taxes, fees, and premiums.

~~(d)~~ **(b)** A licensed surplus lines producer shall execute and file with the department of insurance on or before the twentieth day of each month an affidavit that specifies all transactions, policies, and contracts procured during the preceding calendar month, including:

(1) the description and location of the insured property or risk and the name of the insured;

(2) the gross premiums charged in the policy or contract;

(3) the name and home office address of the insurer whose policy or contract is issued, and the kind of insurance effected; and

(4) a statement that:

(A) the licensee, after diligent effort, was unable to procure from any insurer authorized to transact the particular class of insurance business in Indiana the full amount of insurance required to protect the insured; and

(B) the insurance placed under this chapter is not placed for the purpose of procuring it at a premium rate lower than would be accepted by an insurer authorized and licensed to transact insurance business in Indiana.

~~(e)~~ **(c)** A licensed surplus lines producer shall file with the department, not later than March 31 of each year, the financial statement, dated as of December 31 of the preceding year, of each unauthorized insurer from whom the surplus lines producer has procured a policy or contract. The insurance commissioner may, in the commissioner's discretion, after reviewing the financial statement of the unauthorized insurer, order the surplus lines producer to cancel an unauthorized insurer's policies and contracts if the commissioner is of the opinion that the financial statement or condition of the unauthorized insurer does not warrant continuance of the risk.

~~(f)~~ **(d)** A licensed surplus lines producer shall keep a separate account of all business transacted under this section. The account may be inspected at any time by the commissioner or the commissioner's deputy or examiner.

~~(g)~~ **(e)** An insurer that issues a policy or contract to insure a risk under this section is considered to have appointed the commissioner as the insurer's attorney upon whom process may be served in Indiana in any suit, action, or proceeding based upon or arising out of the policy or contract.

~~(h)~~ **(f)** The commissioner may revoke or refuse to renew a surplus lines producer's license for failure to comply with this section.

~~(i)~~ **(g)** A surplus lines producer licensed under this chapter may accept and place policies or contracts authorized under this section for an insurance producer duly licensed in Indiana, and may compensate the insurance producer even though the insurance producer is not licensed under this chapter.

~~(j)~~ **(h)** If a surplus lines producer does not remit an amount due to the department within the time prescribed in subsection ~~(c),~~ **(a),** the commissioner shall assess the surplus lines producer a penalty of ten percent (10%) of the amount due. The commissioner shall assess a further penalty of an additional one percent (1%) of the amount due for each month or portion of a month that any amount due remains unpaid after the first month. Penalties assessed under this subsection are payable by the surplus lines producer and are not collectible from an insured.

SECTION 16. IC 27-1-22-4, AS AMENDED BY P.L.193-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating schedule, every rating plan, and every

modification of any of the foregoing which it proposes to use.

(b) The following types of insurance are exempt from the requirements of subsections (a) and (j):

(1) Inland marine risks, which by general custom of the business are not written according to manual rates or rating plans.

(2) Insurance ~~other than workers compensation insurance,~~ that is:

(A) written by an insurer that:

(i) complies with subsection (m) and

~~(ii)~~ maintains at least a B rating by A.M. Best or an equivalent rating by another independent insurance rating organization; **or**

(ii) is approved for an exemption by the commissioner; and

(B) issued to commercial policyholders.

(c) Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the information upon which the filer supports such filing.

(d) The information furnished in support of a filing may include:

(1) the experience and judgment of the insurer or rating organization making the filing;

(2) its interpretation of any statistical data it relies upon;

(3) the experience of other insurers or rating organizations; or

(4) any other relevant factors.

The commissioner shall have the right to request any additional relevant information. A filing and any supporting information shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

(e) Filings shall become effective upon the date of filing by delivery or upon date of mailing by registered mail to the commissioner, or on a later date specified in the filing.

(f) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(g) Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf, provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the commissioner to accept such filings on its behalf.

(h) Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the commissioner to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership, provided:

(1) that any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the commissioner and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

(2) that any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the commissioner:

(A) requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and requiring the rating organization, within thirty (30) days after receipt of such request, either:

(i) to make such filing as a rating organization filing;

(ii) to make such filing on an agency basis solely on behalf of the requesting member; or

(iii) to decline the request of such member; and

(B) excluding from membership any insurer which elects to make any filing wholly independently of the rating organization.

(i) Under such rules as the commissioner shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kinds of insurance, or subdivision, or classes of risk, or parts or combinations of any of the foregoing, the rates for which can not practicably be filed before they are used. Such orders and rules shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as the commissioner may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate, or unfairly discriminatory.

(j) Upon the written application of the insured, stating the insured's reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(k) An insurer shall not make or issue a policy or contract except in accordance with filings which are in effect for that insurer or in accordance with the provisions of this chapter. Subject to the provisions of section 6 of this chapter, any rates, rating plans, rules, classifications, or systems in effect on May 31, 1967, shall be continued in effect until withdrawn by the insurer or rating organization which filed them.

(l) The commissioner shall have the right to make an investigation and to examine the pertinent files and records of any insurer, insurance producer, or insured in order to ascertain compliance with any filing for rate or coverage which is in effect. The commissioner shall have the right to set up procedures necessary to eliminate noncompliance, whether on an individual policy, or because of a system of applying charges or discounts which results in failure to comply with such filing.

(m) This subsection applies to an insurer that issues a commercial property or commercial casualty insurance policy to a commercial policyholder. Not more than thirty (30) days after the insurer begins using a commercial property or commercial casualty insurance:

(1) rate;

(2) rating plan;

(3) manual of classifications; ~~or~~

(4) form; or

~~(4)~~ **(5)** modification of an item specified in subdivision (1), (2), ~~or~~ (3), **or (4);**

the insurer shall file with the department, for informational purposes only, the item specified in subdivision (1), (2), (3), ~~or~~ (4), **or (5).** Use of an item specified in subdivision (1), (2), (3), ~~or~~ (4), **or (5)** is not conditioned on review or approval by the department. This subsection does not require filing of an individual policy rate if the original manuals, rates, and rules for the insurance plan or program to which the individual policy conforms has been filed with the department.

(n) ~~Subsection (m) does not apply to~~ **An insurer that issues a commercial property or commercial casualty insurance** policy ~~forms.~~ **form, endorsement, or rider that is prepared to provide or exclude coverage for an unusual or extraordinary risk of a particular commercial policyholder must maintain the policy form, endorsement, or rider in the insurer's Indiana office and provide the policy form, endorsement, or rider to the commissioner at the commissioner's request.**

(o) If coverage under a commercial property or commercial casualty insurance policy is changed, upon renewal of the policy, the insurer shall provide to the policyholder and insurance producer through which the policyholder obtains the coverage a written notice that the policy has been changed.

SECTION 17. IC 27-1-25-12.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12.2. (a) An administrator that:

(1) performs the duties of an administrator in Indiana; and

(2) does not hold a license issued under section 11.1 of this chapter;

shall obtain a nonresident administrator license under this section by filing a uniform application with the commissioner.

(b) Unless the commissioner verifies the nonresident administrator's home state license status through an electronic data base maintained by the NAIC or by an affiliate or a subsidiary of the NAIC, a uniform application filed under subsection (a) must be accompanied by a letter of certification from the nonresident administrator's home state, verifying that the nonresident administrator holds a resident administrator license in the home state.

(c) A nonresident administrator is not eligible for a nonresident administrator license under this section unless the nonresident administrator is licensed as a resident administrator in a home state that has a law or regulation that is substantially similar to this chapter.

(d) Except as provided in subsections (b) and (h), the commissioner shall issue a nonresident administrator license to a nonresident administrator that makes a filing under subsections (a) and (b) upon receipt of the filing.

(e) Unless a nonresident administrator is notified by the commissioner that the commissioner is able to verify the nonresident administrator's home state licensure through an electronic data base described in subsection (b), the nonresident administrator shall:

(1) on September 15 of each year, file a statement with the commissioner affirming that the nonresident administrator maintains a current license in the nonresident administrator's home state; and

(2) pay a filing fee as required by the commissioner.

The commissioner shall collect a filing fee required under subdivision (2) and deposit the fee into the department of insurance fund established by IC 27-1-3-28.

(f) A nonresident administrator that applies for licensure under this section shall:

(1) produce the accounts of the nonresident administrator;

(2) produce the records and files of the nonresident administrator for examination; and

(3) make the officers of the nonresident administrator available to provide information with respect to the affairs of the nonresident administrator;

when reasonably required by the commissioner.

(g) A nonresident administrator is not required to hold a nonresident administrator license in Indiana if the nonresident administrator's function in Indiana is limited to the administration of life, health, or annuity coverage for a total of not more than one hundred (100) Indiana residents.

(h) The commissioner may refuse to issue or may delay the issuance of a nonresident administrator license if the commissioner determines that:

(1) due to events occurring; or

(2) based on information obtained;

after the nonresident administrator's home state's licensure of the nonresident administrator, the nonresident administrator is unable to comply with this chapter or grounds exist for the home state's revocation or suspension of the nonresident administrator's home state license.

(i) If the commissioner makes a determination described in subsection (h), the commissioner:

(1) shall provide written notice of the determination to the insurance regulator of the nonresident administrator's home state; and

(2) may delay the issuance of a nonresident administrator license to the nonresident administrator until the commissioner determines that the nonresident administrator is able to comply with this chapter and that grounds do not exist for the home state's revocation or suspension of the nonresident administrator's home state license.

SECTION 18. IC 27-1-25-12.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12.3. (a) An administrator that is licensed under section 11.1 of this chapter shall, not later than July 1 of each year unless the commissioner grants an extension of time for good cause, file a report for the previous calendar year that complies with the following:

(1) The report must contain financial information reflecting a positive net worth prepared in accordance with section 11.1(b)(4) of this chapter.

(2) The report must be in the form and contain matters prescribed by the commissioner.

(3) The report must be verified by at least two (2) officers of the administrator.

(4) The report must include the complete names and addresses of insurers with which the administrator had a written agreement during the preceding fiscal year.

(5) The report must be accompanied by a filing fee determined by the commissioner.

The commissioner shall collect a filing fee paid under subdivision (5) and deposit the fee into the department of insurance fund established by IC 27-1-3-28.

(b) The commissioner shall review a report filed under

subsection (a) not later than September 1 of the year in which the report is filed. Upon completion of the review, the commissioner shall:

(1) issue a certification to the administrator:

(A) indicating that:

(i) the financial statement reflects a positive net worth; and

(ii) the administrator is currently licensed and in good standing; or

(B) noting deficiencies found in the report; or

(2) update an electronic data base that is maintained by the NAIC or by an affiliate or a subsidiary of the NAIC:

(A) indicating that the administrator is solvent and in compliance with this chapter; or

(B) noting deficiencies found in the report.

SECTION 19. IC 27-1-34-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) As used in this chapter, "arrangement" refers to a multiple employer welfare arrangement.

(b) As used in this chapter, "multiple employer welfare arrangement" means an entity other than a duly admitted insurer that establishes an employee benefit plan for the purpose of offering or providing accident and sickness or death benefits to the employees of at least two (2) employers, including self-employed individuals and their dependents. **For purposes of this subsection, two (2) employers, one (1) of which holds an ownership interest of at least fifty-one percent (51%) in the other, are considered to be one (1) employer.**

SECTION 20. IC 27-1-40 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 40. Entry of Unauthorized Alien Companies

Sec. 1. As used in this chapter, "trusteed surplus" means the aggregate value of a United States branch's:

(1) surplus and reserve funds required under IC 27-1-6; and

(2) trust assets described in section 5 of this chapter;

plus investment income accrued on the items described in subdivisions (1) and (2) if the investment income is collected by the state for the trustees, less the aggregate net amount of all of the United States branch's reserves and other liabilities in the United States, as determined under section 6 of this chapter.

Sec. 2. As used in this chapter, "United States branch" means:

(1) an entity that is considered, for purposes of this chapter, to be a domestic company through which insurance business is transacted in the United States by an alien company; and

(2) the alien company's assets and liabilities that are attributable to the insurance business transacted in the United States.

Sec. 3. Indiana may serve as a state of entry to enable an alien company to transact insurance business in the United States through a United States branch if the United States branch:

(1) qualifies under this title for a certificate of authority as if the United States branch were a domestic company organized under this title; and

(2) establishes a trust account that meets the following conditions:

(A) The trust account is established under a trust agreement approved by the commissioner with a United States bank.

(B) The amount in the trust account is at least equal to:

(i) the minimum capital and surplus requirements; or

(ii) the authorized control level risk based capital requirements;

whichever is greater, that apply to a domestic company that possesses a certificate of authority to transact the same kind of insurance business in Indiana as the United States branch will transact.

Sec. 4. (a) A trust account established under section 3(2) of this chapter must contain, at all times, an amount equal to the United States branch's reserves and other liabilities, plus the:

(1) minimum capital and surplus requirement; or

(2) authorized control level risk based capital requirement;

whichever is greater, that applies to a domestic company granted a certificate of authority under this title to transact the same kind of insurance business as the United States branch transacts.

(b) One (1) or more trustees must be appointed to administer the trust.

(c) A trust agreement for a trust account established under section 3(2) of this chapter, and amendments to the trust agreement:

(1) must be authenticated in a manner prescribed by the commissioner; and

(2) are effective only when approved by the commissioner after the commissioner finds all of the following:

(A) The trust agreement and amendments are sufficient in form and in conformity with law.

(B) All trustees appointed under subsection (b) are eligible to serve as trustees.

(C) The trust agreement is adequate to protect the interests of the beneficiaries of the trust.

(d) The commissioner may withdraw an approval granted under subsection (c)(2) if, after notice and hearing, the commissioner determines that one (1) or more of the conditions required under subsection (c)(2) for approval no longer exist.

(e) The commissioner may approve modifications of, or variations in, a trust agreement under subsection (c) if the modifications or variations are not prejudicial to the interests of Indiana residents, United States policyholders, and creditors of the United States branch.

(f) A trust agreement for a trust account established under section 3(2) of this chapter must contain provisions that:

(1) vest legal title to trust assets in the trustees and lawfully appointed successors of the trustees;

(2) require that all assets deposited in the trust account be continuously kept in the United States;

(3) provide for appointment of a new trustee in case of a vacancy, subject to the approval of the commissioner;

(4) require that the trustees continuously maintain a record sufficient to identify the assets of the trust account;

(5) require that the trust assets consist of:

(A) cash;

(B) investments of the same kind as the investments in which funds of a domestic company may be invested; and

(C) interest accrued on the cash and investments specified in clauses (A) and (B), if collectible by the trustees;

(6) establish that the trust:

(A) is for the exclusive benefit, security, and protection of:

(i) United States policyholders of the United States branch; and

(ii) United States creditors of the United States branch after all obligations to policyholders are paid; and

(B) shall be maintained as long as any liability of the United States branch arising out of the United States branch's insurance transactions in the United States is outstanding; and

(7) establish that trust assets, other than income as specified in subsection (g), may not be withdrawn or permitted by the trustees to be withdrawn without the approval of the commissioner, except for any of the following purposes:

(A) To make deposits required by the law of any state for the security or benefit of all policyholders of the United States branch in the United States.

(B) To substitute other assets permitted by law and at least equal in value and quality to the assets withdrawn, upon the specific written direction of the United States manager of the United States branch when the United States manager is empowered and acting under general or specific written authority previously granted or delegated by the alien company's board of directors.

(C) To transfer the assets to an official liquidator or rehabilitator under a court order.

(g) A trust agreement for a trust account established under section 3(2) of this chapter may provide that income, earnings, dividends, or interest accumulations of the trust assets may be paid over to the United States manager of the United States branch upon request of the United States manager if the total amount of trust assets following the payment to the United States manager is not less than the amount required under subsection (a).

(h) A trust agreement for a trust account established under section 3(2) of this chapter may provide that written approval of the insurance supervising official of another state in which:

(1) trust assets are deposited; and

(2) the United States branch is authorized to transact insurance business;

is sufficient, and approval of the commissioner is not required, for withdrawal of the trust assets in the other state if the amount of total trust assets after the withdrawal will not be less than the amount required under subsection (a). However, the United States branch shall provide written notice to the commissioner of the nature and extent of the withdrawal.

(i) The commissioner may at any time:

(1) make examinations of the trust assets of a United States branch that holds a certificate of authority under this chapter, at the expense of the United States branch; and

(2) require the trustees to file a statement, on a form prescribed by the commissioner, certifying the assets of the trust account and the amounts of the assets.

(j) Refusal or neglect of a trustee to comply with this section is grounds for:

(1) the revocation of the United States branch's certificate of authority; or

(2) the liquidation of the United States branch.

Sec. 5. (a) The commissioner shall require a United States branch to do the following before granting the United States branch a certificate of authority to transact insurance business as described in section 3(1) of this chapter:

(1) Comply with this chapter and any other requirement of this title.

(2) Submit the following:

(A) A copy of the current charter and bylaws of the alien company that intends to transact business through the United States branch and any other documents determined by the commissioner to be necessary to provide evidence of the kinds of insurance business that the alien company is authorized to transact. Documents submitted under this clause must be attested to as accurate by the insurance supervisory official in the alien company's domiciliary jurisdiction.

(B) A full statement, subscribed and affirmed as true under penalty of perjury by two (2) officers or equivalent responsible representatives of the alien company in a manner prescribed by the commissioner, of the alien company's financial condition as of the close of the alien company's latest fiscal year, showing the alien company's:

(i) assets;

(ii) liabilities;

(iii) income disbursements;

(iv) business transacted; and

(v) other facts required to be shown in the alien company's annual statement reported to the insurance supervisory official in the alien company's domiciliary jurisdiction.

(C) An English translation, if necessary, of any document submitted under this subdivision.

(3) Submit to an examination of the affairs of the alien company that intends to transact business through the United States branch at the alien company's principal office in the United States. However, the commissioner may accept a report of the insurance supervisory official in the alien company's domiciliary jurisdiction in lieu of the examination required under this subdivision.

(b) The commissioner may at any time hire, at a United States branch's expense, any independent experts that the commissioner considers necessary to implement this chapter with respect to the United States branch.

Sec. 6. (a) A United States branch shall file with the commissioner, not later than March 1, May 15, August 15, and November 15 of each year, all of the following:

(1) Statements of the insurance business transacted in the United States, the assets held by or for the United States branch in the United States for the protection of policyholders and creditors in the United States, and the liabilities incurred against the assets. All of the following apply to the statements filed under this subdivision:

(A) The statements must contain information concerning only the United States branch's assets and insurance business in the United States.

(B) The statements must be in the same form as statements required of a domestic company that possesses a certificate of authority to transact the same kinds of insurance business as the United States branch transacts.

(C) The statements must be filed as follows:

(i) Quarterly statements filed not later than May 15, August 15, and November 15 of each year for the first three (3) quarters of the calendar year.

(ii) An annual statement, filed not later than March 1 of each year.

(2) A trusteed surplus statement, in a form prescribed by the commissioner, at the end of the period covered by each statement described in subdivision (1)(C). In determining the net amount of the United States branch's liabilities in the United States to be reported in the statement of trusteed surplus, the United States branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statement as follows:

(A) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement.

(B) Deduct:

(i) unearned premiums on insurance producer balances or uncollected premiums that are not more than ninety (90) days past due;

(ii) losses reinsured by reinsurers authorized to do business in Indiana, less unpaid reinsurance premiums to be paid to the authorized reinsurers;

(iii) reinsurance recoverables on paid losses from reinsurers not authorized to do business in Indiana that are included as an asset in the annual statement, but only to the extent that a liability for the unauthorized recoverables is included in the liabilities report in the trusteed surplus statement;

(iv) special state deposits held for the exclusive benefit of policyholders of a particular state that do not exceed net liabilities reports for the particular state;

(v) secured accrued retrospective premiums;

(vi) if the alien company transacting business through the United States branch is a life insurer, the amount of the alien company's policy loans to policyholders in the United States, not exceeding the amount of legal reserve required on each policy, and the net amount of uncollected and deferred premiums; and

(vii) any other nontrust asset that the commissioner determines secures liabilities in a manner substantially similar to the manner in which liabilities are secured by the unearned premiums, losses reinsured, reinsurance recoverables, special state deposits, secured accrued retrospective premiums, and policy loans referred to in items (i) through (vi).

(3) Any additional information that relates to the business or assets of the alien company and is required by the commissioner.

(b) The annual statement and trusteed surplus statement described in subsection (a) must be signed and verified by the United States manager, the attorney in fact, or an empowered assistant United States manager, of the United States branch. Items of securities and other property held under a trust agreement must be certified in the trusteed surplus statement by the United States trustees.

(c) Each report concerning an examination of a United States branch conducted under section 4(i) of this chapter must include a trusteed surplus statement as of the date of examination and a general statement of the financial condition of the United States branch.

Sec. 7. (a) Before issuing a new or renewal certificate of authority to a United States branch, the commissioner may require satisfactory proof:

(1) in the charter of the alien company transacting business through the United States branch;

(2) by an agreement evidenced by a certified resolution of the alien company's board of directors; or

(3) otherwise as required by the commissioner;

that the United States branch will not engage in any insurance business not authorized by this chapter and by the alien company's charter.

(b) The commissioner shall issue a renewal certificate of authority to a United States branch if the commissioner is satisfied that the United States branch is not delinquent in any requirement of this title and that the United States branch's continued insurance business in Indiana is not contrary to the best interest of the citizens of Indiana.

(c) A United States branch may not be:

(1) granted a certificate of authority to transact any kind of insurance business in Indiana that is not permitted to be transacted in Indiana by a domestic company granted a certificate of authority under this title; or

(2) authorized to transact an insurance business in Indiana if the United States branch transacts, anywhere in the United States, any kind of business other than an insurance business (and business incidental to the kind of insurance business) that the United States branch is authorized to transact in Indiana.

(d) A United States branch entering the United States through Indiana or another state may not be authorized to transact an insurance business in Indiana if the United States branch fails to substantially comply with any requirement of this title that:

(1) applies to a similar domestic company that is organized after July 1, 2007; and

(2) the commissioner determines is necessary to protect the interest of the policyholders.

(e) Unless the commissioner determines that the kind of insurance is not contrary to the best interest of the citizens of Indiana, a United States branch may not transact any kind of insurance business that is not permitted to be transacted in Indiana by a similar domestic company that is organized after July 1, 2007.

(f) A United States branch may not be authorized to transact an insurance business in Indiana unless the United States branch maintains correct and complete records of the United States branch's transactions that are:

(1) open to inspection by any person who has the right to inspect the records; and

(2) maintained at the United States branch's principal office in Indiana.

Sec. 8. If the commissioner determines from a quarterly or annual statement, a trusteed surplus statement, or another report that a United States branch's trusteed surplus is less than:

(1) the minimum capital and surplus requirements; or

(2) the authorized control level risk based capital requirements;

whichever is greater, that apply to a domestic insurer granted a certificate of authority to transact the same kind of insurance business in Indiana, the commissioner may proceed under IC 27-9 against the United States branch as if the United States branch were an insurer in such condition that further transaction by the insurer of insurance business in the United States would be hazardous to the insurer's policyholders, creditors, or residents of the United States.

SECTION 21. IC 27-8-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The term "policy of accident and sickness insurance", as used in this chapter, includes any policy or contract covering one (1) or more of the kinds of insurance described in Class 1(b) or 2(a) of IC 27-1-5-1. Such policies may be on the individual basis under this section and sections 2 through 9 of this chapter, on the group basis under this section and sections 16 through 19 of this chapter, on the franchise basis under this section and section 11 of this chapter, or on a blanket basis under section 15 of this chapter and (except as otherwise expressly provided in this chapter) shall be exclusively governed by this chapter.

(b) No policy of accident and sickness insurance may be issued or delivered to any person in this state, nor may any application, rider, or endorsement be used in connection with an accident and sickness insurance policy, until a copy of the form of the policy and of the classification of risks and the premium rates, or, in the case of assessment companies, the estimated cost pertaining thereto, have been filed with **and reviewed by** the commissioner **under section 1.5 of this chapter.** This section is applicable also to assessment companies and fraternal benefit associations or societies.

~~(c) No policy of accident and sickness insurance may be issued, nor may any application, rider, or endorsement be used in connection with a policy of accident and sickness insurance, until the expiration of thirty (30) days after it has been filed under subsection (b), unless the commissioner gives his written approval to it before the expiration of the thirty (30) day period.~~

~~(d) The commissioner may, within thirty (30) days after the filing of any form under subsection (b), disapprove the form:~~

~~(1) if, in the case of an individual accident and sickness form, the benefits provided therein are unreasonable in relation to the premium charged; or~~

~~(2) if, in the case of an individual, blanket, or group accident and sickness form, it contains a provision or provisions that are unjust, unfair, inequitable, misleading, or deceptive or that encourage misrepresentation of the policy.~~

~~(e) If the commissioner notifies the insurer that filed a form that the form does not comply with this section, it is unlawful thereafter for the insurer to issue the form or use it in connection with any policy. In the notice given under this subsection, the commissioner shall specify the reasons for his disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer.~~

~~(f) The commissioner may at any time, after a hearing of which not less than twenty (20) days written notice has been given to the insurer, withdraw his approval of any form filed under subsection (b) on any of the grounds stated in this section. It is unlawful for the insurer to issue the form or use it in connection with any policy after the effective date of the withdrawal of approval. The notice of any hearing called under this subsection must specify the matters to be considered at the hearing, and any decision affirming disapproval or directing withdrawal of approval under this section must be in writing and must specify the reasons for the decision.~~

~~(g) Any order or decision of the commissioner under this section is subject to review under IC 4-21.5.~~

SECTION 22. IC 27-8-5-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) This section applies to a policy of accident and sickness insurance issued on an individual, a group, a franchise, or a blanket basis, including a policy issued by an assessment company or a fraternal benefit society.**

(b) As used in this section, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(c) As used in this section, "grossly inadequate filing" means a policy form filing:

(1) that fails to provide key information, including state specific information, regarding a product, policy, or rate; or

(2) that demonstrates an insufficient understanding of applicable legal requirements.

(d) As used in this section, "policy form" means a policy, a contract, a certificate, a rider, an endorsement, an evidence of coverage, or any amendment that is required by law to be filed with the commissioner for approval before use in Indiana.

(e) As used in this section, "type of insurance" refers to a type of coverage listed on the National Association of Insurance Commissioners Uniform Life, Accident and Health, Annuity and Credit Product Coding Matrix, or a successor document, under the heading "Continuing Care Retirement Communities", "Health", "Long Term Care", or "Medicare Supplement".

(f) Each person having a role in the filing process described in subsection (i) shall act in good faith and with due diligence in the performance of the person's duties.

(g) A policy form may not be issued or delivered in Indiana unless the policy form has been filed with and approved by the commissioner.

(h) The commissioner shall do the following:

(1) Create a document containing a list of all product filing requirements for each type of insurance, with appropriate citations to the law, administrative rule, or bulletin that specifies the requirement, including the citation for the type of insurance to which the requirement applies.

(2) Make the document described in subdivision (1) available on the department of insurance Internet site.

(3) Update the document described in subdivision (1) at least annually and not more than thirty (30) days following any change in a filing requirement.

(i) The filing process is as follows:

(1) A filer shall submit a policy form filing that:

(A) includes a copy of the document described in subsection (h);

(B) indicates the location within the policy form or supplement that relates to each requirement contained in the document described in subsection (h); and

(C) certifies that the policy form meets all requirements of state law.

(2) The commissioner shall review a policy form filing and, not more than thirty (30) days after the commissioner receives the filing under subdivision (1):

(A) approve the filing; or

(B) provide written notice of a determination:

(i) that deficiencies exist in the filing; or

(ii) that the commissioner disapproves the filing.

A written notice provided by the commissioner under clause (B) must be based only on the requirements set forth in the document described in subsection (h) and must cite the specific requirements not met by the filing. A written notice provided by the commissioner under clause (B)(i) must state the reasons for the commissioner's determination in sufficient detail to enable the filer to bring the policy form into compliance with the requirements not met by the filing.

(3) A filer may resubmit a policy form that:

(A) was determined deficient under subdivision (2) and has been amended to correct the deficiencies; or

(B) was disapproved under subdivision (2) and has been revised.

A policy form resubmitted under this subdivision must meet the requirements set forth as described in subdivision (1) and must be resubmitted not more than thirty (30) days after the filer receives the commissioner's written notice of deficiency or disapproval. If a policy form is not resubmitted within thirty (30) days after receipt of the written notice, the commissioner's determination regarding the policy form is final.

(4) The commissioner shall review a policy form filing resubmitted under subdivision (3) and, not more than thirty (30) days after the commissioner receives the resubmission:

(A) approve the resubmitted policy form; or

(B) provide written notice that the commissioner disapproves the resubmitted policy form.

A written notice of disapproval provided by the commissioner under clause (B) must be based only on the requirements set forth in the document described in subsection (h), must cite the specific requirements not met by the filing, and must state the reasons for the commissioner's determination in detail. The commissioner's approval or disapproval of a resubmitted policy form under this subdivision is final, except that the commissioner may allow the filer to resubmit a further revised policy form if the filer, in the filer's resubmission under subdivision (3), introduced new provisions or materially modified a substantive provision of the policy form. If the commissioner allows a filer to resubmit a further revised policy form under this subdivision, the filer must resubmit the further revised policy form not more than thirty (30) days after the filer receives notice under clause (B), and the commissioner shall issue a final determination on the further revised policy form not more than thirty (30) days after the commissioner receives the further revised policy form.

(5) If the commissioner disapproves a policy form filing under this subsection, the commissioner shall notify the filer, in writing, of the filer's right to a hearing as described in subsection (m). The policy form may not be disapproved unless it contains a material error or omission. At any hearing conducted under this subsection, the commissioner must prove that the policy form contains a material error or omission.

(j) Except as provided in this subsection, the commissioner may not disapprove a policy form resubmitted under subsection (i)(3) or (i)(4) for a reason other than a reason specified in the original notice of determination under subsection (i)(2)(B). The commissioner may disapprove a resubmitted policy form for a reason other than a reason specified in the original notice of determination under subsection (i)(2) if:

(1) the filer has introduced a new provision in the resubmission;

(2) the filer has materially modified a substantive provision of the policy form in the resubmission;

(3) there has been a change in requirements applying to the policy form; or

(4) there has been reviewer error and the written disapproval fails to state a specific requirement with which the policy form does not comply.

(k) The commissioner may return a grossly inadequate filing to the filer without triggering a deadline set forth in this section.

(l) The commissioner may disapprove a policy form if:

(1) the benefits provided under the policy form are not reasonable in relation to the premium charged; or

(2) the policy form contains provisions that are unjust, unfair, inequitable, misleading, or deceptive, or that encourage misrepresentation of the policy.

(m) Upon disapproval of a filing under this section, the commissioner shall provide written notice to the filer or insurer of the right to a hearing within twenty (20) days of a request for a hearing.

(n) Unless a policy form approved under this chapter contains a material error or omission, the commissioner may not:

(1) retroactively disapprove the policy form; or

(2) examine the filer of the policy form during a routine or targeted market conduct examination for compliance with a policy form filing requirement that was not in existence at the time the policy form was filed.

SECTION 23. IC 27-8-5-2.5, AS AMENDED BY P.L.127-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.5. (a) As used in this section, the term "policy of accident and sickness insurance" does not include the following:

(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Automobile medical payment insurance.

(4) A specified disease policy. ~~issued as an individual policy.~~

~~(5) A limited benefit health insurance policy issued as an individual policy.~~

~~(6)~~ **(5)** A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

~~(7)~~ **(6)** A policy that provides ~~a stipulated daily, weekly, or monthly payment to an insured during hospital confinement, without regard to the actual expense of the confinement.~~ **indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:**

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

~~(8)~~ **(7)** Worker's compensation or similar insurance.

~~(9)~~ **(8)** A student health ~~insurance policy.~~ **plan.**

(9) A supplemental plan that always pays in addition to other coverage.

(10) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

(b) The benefits provided by:

(1) an individual policy of accident and sickness insurance; or

(2) a certificate of coverage that is issued under a nonemployer based association group policy of accident and sickness insurance to an individual who is a resident of Indiana;

may not be excluded, limited, or denied for more than twelve (12) months after the effective date of the coverage because of a preexisting condition of the individual.

(c) An individual policy of accident and sickness insurance or a certificate of coverage described in subsection (b) may not define a preexisting condition, a rider, or an endorsement more restrictively than as:

(1) a condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment during the twelve (12) months immediately preceding the effective date of ~~enrollment in~~ the plan;

(2) a condition for which medical advice, diagnosis, care, or treatment was recommended or received during the twelve (12) months immediately preceding the effective date of ~~enrollment in~~ the plan; or

(3) a pregnancy existing on the effective date of ~~enrollment in~~ the plan.

(d) An insurer shall reduce the period allowed for a preexisting condition exclusion described in subsection (b) by the amount of time the individual has continuously served under a preexisting condition clause for a policy of accident and sickness insurance issued under IC 27-8-15 if the individual applies for a policy under this chapter not more than thirty (30) days after coverage under a policy of accident and sickness insurance issued under IC 27-8-15 expires.

(e) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. Notwithstanding subsections (b) and (c), an individual policy of accident and sickness insurance may contain a waiver of coverage for a specified condition and complications directly related to the specified condition if:

(1) the period for which the exemption would be in effect does not exceed two (2) years; and

(2) all of the following conditions are met:

(A) The insurer provides to the applicant before issuance of the policy a written notice explaining the waiver of coverage for the specified condition and complications directly related to the specified condition, including a specific description of each condition, complication, service, and treatment for which coverage is being waived.

(B) The:

(i) offer of coverage; and

(ii) policy;

include the waiver in a separate section stating in bold print that the applicant is receiving coverage with an exception for the waived condition and specifying each related condition, complication, service, and treatment for which coverage is waived.

(C) The:

(i) offer of coverage; and

(ii) policy;

do not include more than two (2) waivers per individual.

(D) The waiver period is concurrent with and not in addition to any applicable preexisting condition limitation or exclusionary period.

(E) The insurer agrees to:

(i) review the underwriting basis for the waiver upon request one (1) time per year; and

(ii) remove the waiver if the insurer determines that evidence of insurability is satisfactory.

(F) The insurer discloses to the applicant that the applicant may decline the offer of coverage and apply for a policy issued by the Indiana comprehensive health insurance association under IC 27-8-10.

(G) The waiver of coverage does not apply to coverage required under state law.

(H) An insurance benefit card issued by the insurer to the applicant includes a telephone number for verification of coverage waived.

The insurer shall require an applicant to initial the written notice provided under subdivision (2)(A) and the waiver included in the offer of coverage and in the policy under subdivision (2)(B) to acknowledge acceptance of the waiver of coverage. An offer of coverage under a policy that includes a waiver under this subsection does not preclude eligibility for an Indiana comprehensive health insurance association policy under IC 27-8-10-5.1. This subsection expires July 1, 2007.

(f) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. An insurer shall not, on the basis of a waiver contained in a policy as provided in subsection (e), deny coverage for any condition, complication, service, or treatment that is not specified as required in the:

(1) written notice under subsection (e)(2)(A); and

(2) offer of coverage and policy under subsection (e)(2)(B).

This subsection expires July 1, 2007.

(g) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. An individual who is covered under a policy that includes a waiver under subsection (e) may directly appeal a denial of coverage based on the waiver by filing a request for an external grievance review under IC 27-8-29 without pursuing a grievance under IC 27-8-28. This subsection expires July 1, 2007.

(h) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. Notwithstanding subsection (e), an individual policy of accident and sickness insurance may not contain a waiver of coverage for:

(1) a mental health condition; or

(2) a developmental disability.

This subsection expires July 1, 2007.

(i) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. A waiver under this section may be applied to a policy of accident and sickness insurance only at the time the policy is issued. This subsection expires July 1, 2007.

(j) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. An insurer or insurance producer shall not use this section to circumvent the guaranteed access and availability provisions of this chapter, IC 27-8-15, or the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191). This subsection expires July 1, 2007.

(k) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. A pattern or practice of violations of subsections (e) through (j) is an unfair method of competition or an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4. This subsection expires July 1, 2007.

SECTION 24. IC 27-8-5-15.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15.6. (a) As used in this section, "coverage of services for a mental illness" includes the services defined under the policy of accident and sickness insurance. However, the term does not include services for the treatment of substance abuse or chemical dependency.

(b) This section applies to a policy of accident and sickness insurance that:

(1) is issued on an individual basis or a group basis;

(2) is issued, entered into, or renewed after December 31, 1999; and

(3) is issued to an employer that employs more than fifty (50) full-time employees.

(c) This section does not apply to the following:

~~(1) An insurance policy listed under IC 27-8-15-9(b).~~

~~(2)~~ **(1)** A legal business entity that has obtained an exemption under section 15.7 of this chapter.

(2) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.

(3) Coverage issued as a supplement to liability insurance.

(4) Worker's compensation or similar insurance.

(5) Automobile medical payment insurance.

(6) A specified disease policy.

(7) A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

(8) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

(9) A supplemental plan that always pays in addition to other coverage.

(10) A student health plan.

(11) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

(d) A group or individual insurance policy or agreement may not permit treatment limitations or financial requirements on the coverage of services for a mental illness if similar limitations or requirements are not imposed on the coverage of services for other medical or surgical conditions.

(e) An insurer that issues a policy of accident and sickness insurance that provides coverage of services for the treatment of substance abuse and chemical dependency when the services are required in the treatment of a mental illness shall offer to provide the coverage without treatment limitations or financial requirements if similar limitations or requirements are not imposed on the coverage of services for other medical or surgical conditions.

(f) This section does not require a group or individual insurance policy or agreement to offer mental health benefits.

(g) The benefits delivered under this section may be delivered under a managed care system.

SECTION 25. IC 27-8-5-19, AS AMENDED BY P.L.127-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) As used in this chapter, "late enrollee" has the meaning set forth in 26 U.S.C. 9801(b)(3).

(b) A policy of group accident and sickness insurance may not be issued to a group that has a legal situs in Indiana unless it contains in substance:

(1) the provisions described in subsection (c); or

(2) provisions that, in the opinion of the commissioner, are:

(A) more favorable to the persons insured; or

(B) at least as favorable to the persons insured and more favorable to the policyholder;

than the provisions set forth in subsection (c).

(c) The provisions referred to in subsection (b)(1) are as follows:

(1) A provision that the policyholder is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the policy will continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder is liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period. A provision under this subdivision may provide that the insurer is not obligated to pay claims incurred during the grace period until the premium due is received.

(2) A provision that the validity of the policy may not be contested, except for nonpayment of premiums, after the policy has been in force for two (2) years after its date of issue, and that no statement made by a person covered under the policy relating to the person's insurability may be used in contesting the validity of the insurance with respect to which the statement was made, unless:

(A) the insurance has not been in force for a period of two (2) years or longer during the person's lifetime; or

(B) the statement is contained in a written instrument signed by the insured person.

However, a provision under this subdivision may not preclude the assertion at any time of defenses based upon a person's ineligibility for coverage under the policy or based upon other provisions in the policy.

(3) A provision that a copy of the application, if there is one, of the policyholder must be attached to the policy when issued, that all statements made by the policyholder or by the persons insured are to be deemed representations and not warranties, and that no statement made by any person insured may be used in any contest unless a copy of the instrument containing the statement is or has been furnished to the insured person or, in the event of death or incapacity of the insured person, to the insured person's beneficiary or personal representative.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the person's coverage.

(5) A provision specifying any additional exclusions or limitations applicable under the policy with respect to a disease or physical condition of a person that existed before the effective date of the person's coverage under the policy and that is not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss. An exclusion or limitation that must be specified in a provision under this subdivision:

(A) may apply only to a disease or physical condition for which medical advice, diagnosis, care, or treatment was received by the person or recommended to the person during the six (6) months before the ~~enrollment~~ **effective** date of the person's coverage; and

(B) may not apply to a loss incurred or disability beginning after the earlier of:

(i) the end of a continuous period of twelve (12) months beginning on or after the ~~enrollment~~ **effective** date of the person's coverage; or

(ii) the end of a continuous period of eighteen (18) months beginning on the ~~enrollment~~ **effective** date of the person's coverage if the person is a late enrollee.

This subdivision applies only to group policies of accident and sickness insurance other than those described in section 2.5(a)(1) through 2.5(a)(8) and 2.5(b)(2) of this chapter.

(6) A provision specifying any additional exclusions or limitations applicable under the policy with respect to a disease or physical condition of a person that existed before the effective date of the person's coverage under the policy. An exclusion or limitation that must be specified in a provision under this subdivision:

(A) may apply only to a disease or physical condition for which medical advice or treatment was received by the person during a period of three hundred sixty-five (365) days before the effective date of the person's coverage; and

(B) may not apply to a loss incurred or disability beginning after the earlier of the following:

(i) The end of a continuous period of three hundred sixty-five (365) days, beginning on or after the effective date of the person's coverage, during which the person did not receive medical advice or treatment in connection with the disease or physical condition.

(ii) The end of the two (2) year period beginning on the effective date of the person's coverage.

This subdivision applies only to group policies of accident and sickness insurance described in section 2.5(a)(1) through 2.5(a)(8) of this chapter.

(7) If premiums or benefits under the policy vary according to a person's age, a provision specifying an equitable adjustment of:

(A) premiums;

(B) benefits; or

(C) both premiums and benefits;

to be made if the age of a covered person has been misstated. A provision under this subdivision must contain a clear statement of the method of adjustment to be used.

(8) A provision that the insurer will issue to the policyholder, for delivery to each person insured, a certificate, in electronic or paper form, setting forth a statement that:

(A) explains the insurance protection to which the person insured is entitled;

(B) indicates to whom the insurance benefits are payable; and

(C) explains any family member's or dependent's coverage under the policy.

The provision must specify that the certificate will be provided in paper form upon the request of the insured.

(9) A provision stating that written notice of a claim must be given to the insurer within twenty (20) days after the occurrence or commencement of any loss covered by the policy, but that a failure to give notice within the twenty (20) day period does not invalidate or reduce any claim if it can be shown that it was not reasonably possible to give notice within that period and that notice was given as soon as was reasonably possible.

(10) A provision stating that:

(A) the insurer will furnish to the person making a claim, or to the policyholder for delivery to the person making a claim, forms usually furnished by the insurer for filing proof of loss; and

(B) if the forms are not furnished within fifteen (15) days after the insurer received notice of a claim, the person making the claim will be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which the claim is made.

(11) A provision stating that:

(A) in the case of a claim for loss of time for disability, written proof of the loss must be furnished to the insurer within ninety (90) days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of the disability must be furnished to the insurer at reasonable intervals as may be required by the insurer;

(B) in the case of a claim for any other loss, written proof of the loss must be furnished to the insurer within ninety (90) days after the date of the loss; and

(C) the failure to furnish proof within the time required under clause (A) or (B) does not invalidate or reduce any claim if it was not reasonably possible to furnish proof within that time, and if proof is furnished as soon as reasonably possible but (except in case of the absence of legal capacity of the claimant) no later than one (1) year from the time proof is otherwise required under the policy.

(12) A provision that:

(A) all benefits payable under the policy (other than benefits for loss of time) will be paid:

(i) not more than forty-five (45) days after the insurer's (as defined in IC 27-8-5.7-3) receipt of written proof of loss if the claim is filed by the policyholder; or

(ii) in accordance with IC 27-8-5.7 **if the claim is filed by the provider (as defined in IC 27-8-5.7-4);** and

(B) subject to due proof of loss, all accrued benefits under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of the period for which the insurer is liable will be paid as soon as possible after receipt of the proof of loss.

(13) A provision that benefits for loss of life of the person insured are payable to the beneficiary designated by the person insured. However, if the policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms. In either case, payment of benefits for loss of life is subject to the provisions of the policy if no designated or specified beneficiary is living at the death of the person insured. All other benefits of the policy are payable to the person insured. The policy may also provide that if any benefit is payable to the estate of a person or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay the benefit, up to an amount of five thousand dollars ($5,000), to any relative by blood or connection by marriage of the person who is deemed by the insurer to be equitably entitled to the benefit.

(14) A provision that the insurer, **at the insurer's expense,** has the right and must be allowed the opportunity to:

(A) examine the person of the individual for whom a claim is made under the policy when and as often as the insurer reasonably requires during the pendency of the claim; and

(B) conduct an autopsy in case of death if it is not prohibited by law.

(15) A provision that no action at law or in equity may be brought to recover on the policy less than sixty (60) days after proof of loss is filed in accordance with the requirements of the policy and that no action may be brought at all more than three (3) years after the expiration of the time within which proof of loss is required by the policy.

(16) In the case of a policy insuring debtors, a provision that the insurer will furnish to the policyholder, for delivery to each debtor insured under the policy, a certificate of insurance describing the coverage and specifying that the benefits payable will first be applied to reduce or extinguish the indebtedness.

(17) If the policy provides that hospital or medical expense coverage of a dependent child of a group member terminates upon the child's attainment of the limiting age for dependent children set forth in the policy, a provision that the child's attainment of the limiting age does not terminate the hospital and medical coverage of the child while the child is:

(A) incapable of self-sustaining employment because of mental retardation or mental or physical disability; and

(B) chiefly dependent upon the group member for support and maintenance.

A provision under this subdivision may require that proof of the child's incapacity and dependency be furnished to the insurer by the group member within one hundred twenty (120) days of the child's attainment of the limiting age and, subsequently, at reasonable intervals during the two (2) years following the child's attainment of the limiting age. The policy may not require proof more than once per year in the time more than two (2) years after the child's attainment of the limiting age. This subdivision does not require an insurer to provide coverage to a mentally retarded or mentally or physically disabled child who does not satisfy the requirements of the group policy as to evidence of insurability or other requirements for coverage under the policy to take effect. In any case, the terms of the policy apply with regard to the coverage or exclusion from coverage of the child.

(18) A provision that complies with the group portability and

guaranteed renewability provisions of the federal Health Insurance Portability and Accountability Act of 1996 (P.L.104-191).

(d) Subsection (c)(5), (c)(8), and (c)(13) do not apply to policies insuring the lives of debtors. The standard provisions required under section 3(a) of this chapter for individual accident and sickness insurance policies do not apply to group accident and sickness insurance policies.

(e) If any policy provision required under subsection (c) is in whole or in part inapplicable to or inconsistent with the coverage provided by an insurer under a particular form of policy, the insurer, with the approval of the commissioner, shall delete the provision from the policy or modify the provision in such a manner as to make it consistent with the coverage provided by the policy.

(f) An insurer that issues a policy described in this section shall include in the insurer's enrollment materials information concerning the manner in which an individual insured under the policy may:

(1) obtain a certificate described in subsection (c)(8); and

(2) request the certificate in paper form.

SECTION 26. IC 27-8-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 20. (a) All individual accident and health insurance policies, other than those issued pursuant to direct response solicitation, must have a notice prominently printed on the first page of the policy stating in substance that the policyholder has the right to return the policy:

(1) except as provided in subdivision (2), within ten (10) days of its delivery; **or**

(2) if the policy is a travel accident insurance policy, until the earlier of:

(A) thirty (30) days after the policy is delivered; or

(B) the date of departure;

and to have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason.

(b) All accident and health insurance policies issued pursuant to a direct response solicitation must have a notice prominently printed on the first page stating in substance that the policyholder has the right to return the policy:

(1) except as provided in subdivision (2), within thirty (30) days of its delivery; **or**

(2) if the policy is a travel accident insurance policy, until the earlier of:

(A) thirty (30) days after the policy is delivered; or

(B) the date of departure;

and to have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason.

(c) Notwithstanding subsection (b), a short term health insurance policy that is written for a period of less than sixty-one (61) days and issued under a direct response solicitation must have a notice prominently printed on the first page stating in substance that the policyholder has the right to return the policy within ten (10) days after the policy's delivery and to have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason.

SECTION 27. IC 27-8-5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a) As used in this section, "accident and sickness insurance policy" means an insurance policy that provides at least one (1) of the types of insurance described in IC 27-1-5-1, Classes 1(b) and 2(a), and is issued on a group basis. The term does not include the following:

(1) Accident only, credit, dental, vision, ~~Medicare,~~ Medicare supplement, long term care, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Automobile medical payment insurance.

(4) A specified disease policy.

~~(5) A limited benefit health insurance policy.~~

~~(6)~~ **(5)** A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

~~(7)~~ **(6)** A policy that provides ~~a stipulated daily, weekly, or monthly payment to an insured during hospital confinement, without regard to the actual expense of the confinement.~~ **indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:**

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

~~(8)~~ **(7)** Worker's compensation or similar insurance.

~~(9)~~ **(8)** A student health ~~insurance policy.~~ **plan.**

(9) A supplemental plan that always pays in addition to other coverage.

(10) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

(b) As used in this section, "insured" means a child or an individual with a disability who is entitled to coverage under an accident and sickness insurance policy.

(c) As used in this section, "child" means an individual who is less than nineteen (19) years of age.

(d) As used in this section, "individual with a disability" means an individual:

(1) with a physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual; and

(2) who:

(A) has a record of; or

(B) is regarded as;

having an impairment described in subdivision (1).

(e) A policy of accident and sickness insurance must include coverage for anesthesia and hospital charges for dental care for an insured if the mental or physical condition of the insured requires dental treatment to be rendered in a hospital or an ambulatory outpatient surgical center. The Indications for General Anesthesia, as published in the reference manual of the American Academy of Pediatric Dentistry, are the utilization standards for determining whether performing dental procedures necessary to treat the insured's condition under general anesthesia constitutes appropriate treatment.

(f) An insurer that issues a policy of accident and sickness insurance may:

(1) require prior authorization for hospitalization or treatment in an ambulatory outpatient surgical center for dental care procedures in the same manner that prior authorization is required for hospitalization or treatment of other covered medical conditions; and

(2) restrict coverage to include only procedures performed by a licensed dentist who has privileges at the hospital or ambulatory outpatient surgical center.

(g) This section does not apply to treatment rendered for temporal mandibular joint disorders (TMJ).

SECTION 28. IC 27-8-5.6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a)** As used in this chapter, the term "accident and sickness insurance" means any policy or contract covering one (1) or more of the kinds of insurance described in classes 1(b) or 2(a) of IC 1971, 27-1-5-1, as governed by IC 1971, 27-8-5.

(b) The term does not include the following:

(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Worker's compensation or similar insurance.

(4) Automobile medical payment insurance.

(5) A specified disease policy.

(6) A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

(7) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

(8) A supplemental plan that always pays in addition to other coverage.

(9) A student health plan.

(10) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 29. IC 27-8-12-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. ~~(a) As used in this section, "compensation" includes pecuniary and nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, the following:~~

~~(1) Bonuses.~~

~~(2) Gifts.~~

~~(3) Prizes.~~

~~(4) Awards.~~

~~(5) Finders fees.~~

~~(b)~~ **(a)** An insurer or other entity that provides a commission ~~or other compensation~~ to an insurance producer or other representative for the sale of a long term care insurance policy may not violate the following conditions:

(1) The amount of the first year commission ~~or first year compensation~~ for selling or servicing the policy may not exceed two hundred percent (200%) of the amount of the commission ~~or other compensation~~ paid in the second year.

(2) The amount of commission ~~or other compensation~~ provided in years after the second year must be equal to the amount provided in the second year.

(3) A commission ~~or other compensation~~ must be provided each year for at least five (5) years after the first year.

~~(c)~~ **(b)** If an existing long term care policy or certificate is replaced, the insurer or other entity that issues the replacement policy may not provide, and its insurance producer may not accept, ~~compensation~~ **a commission** in an amount greater than the renewal ~~compensation~~ **commission** payable by the replacing insurer on renewal policies, unless the benefits of the replacement policy or certificate are clearly and substantially greater than the benefits under the replaced policy or certificate.

~~(d)~~ **(c)** This section does not apply to the following:

(1) Life insurance policies and certificates.

(2) A policy or certificate that is sponsored by an employer for the benefit of:

(A) the employer's employees; or

(B) the employer's employees and their dependents.

SECTION 30. IC 27-8-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a)** As used in this chapter, "accident and sickness insurance policy" means an insurance policy that:

(1) provides one (1) or more of the types of insurance described in IC 27-1-5-1, classes 1(b) and 2(a); and

(2) is issued on a group basis.

(b) The term does not include the following:

(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Worker's compensation or similar insurance.

(4) Automobile medical payment insurance.

(5) A specified disease policy.

(6)A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

(7) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

(8) A supplemental plan that always pays in addition to other coverage.

(9) A student health plan.

(10) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 31. IC 27-8-14.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this chapter, "accident and sickness insurance policy" means an insurance policy that:

(1) provides one (1) or more of the types of insurance described in IC 27-1-5-1, classes 1(b) and 2(a); and

(2) is issued on a group basis.

(b) As used in this chapter, "accident and sickness insurance policy" does not include **the following:**

~~(1) accident only;~~

~~(2) credit;~~

~~(3) dental;~~
~~(4) vision;~~
~~(5) Medicare supplement;~~
~~(6) long term care; or~~
~~(7) disability income;~~
~~insurance.~~

(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.
(2) Coverage issued as a supplement to liability insurance.
(3) Worker's compensation or similar insurance.
(4) Automobile medical payment insurance.
(5) A specified disease policy.
(6) A short term insurance plan that:
(A) may not be renewed; and
(B) has a duration of not more than six (6) months.
(7) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:
(A) hospital confinement, critical illness, or intensive care; or
(B) gaps for deductibles or copayments.
(8) A supplemental plan that always pays in addition to other coverage.
(9) A student health plan.
(10) An employer sponsored health benefit plan that is:
(A) provided to individuals who are eligible for Medicare; and
(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 32. IC 27-8-14.2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this chapter, "accident and sickness insurance policy" means an insurance policy that provides one (1) or more of the types of insurance described in IC 27-1-5-1, classes 1(b) and 2(a).

(b) The term does not include the following:
(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.
(2) Coverage issued as a supplement to liability insurance.
(3) Worker's compensation or similar insurance.
(4) Automobile medical payment insurance.
(5) A specified disease policy. ~~issued as an individual policy.~~
~~(6) A limited benefit health insurance policy issued as an individual policy.~~
~~(7)~~ **(6)** A short term insurance plan that:
(A) may not be renewed; and
(B) has a duration of not more than six (6) months.
~~(8)~~ **(7)** A policy that provides ~~a stipulated daily, weekly, or monthly payment to an insured during hospital confinement, without regard to the actual expense of the confinement.~~ **indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:**
(A) hospital confinement, critical illness, or intensive care; or
(B) gaps for deductibles or copayments.
(8) A supplemental plan that always pays in addition to other coverage.
(9) A student health plan.
(10) An employer sponsored health benefit plan that is:
(A) provided to individuals who are eligible for Medicare; and
(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 33. IC 27-8-14.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a)** As used in this chapter, "health insurance plan" means any:
(1) hospital or medical expense incurred policy or certificate;
(2) hospital or medical service plan contract; or
(3) health maintenance organization subscriber contract;
provided to an insured.

(b) The term does not include the following:
(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.
(2) Coverage issued as a supplement to liability insurance.
(3) Worker's compensation or similar insurance.
(4) Automobile medical payment insurance.
(5) A specified disease policy. ~~issued as an individual policy.~~
~~(6) A limited benefit health insurance policy issued as an individual policy.~~
~~(7)~~ **(6)** A short term insurance plan that:
(A) may not be renewed; and
(B) has a duration of not more than six (6) months.
~~(8)~~ **(7)** A policy that provides ~~a stipulated daily, weekly, or monthly payment to an insured during hospital confinement, without regard to the actual expense of the confinement.~~ **indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:**
(A) hospital confinement, critical illness, or intensive care; or
(B) gaps for deductibles or copayments.
(8) A supplemental plan that always pays in addition to other coverage.
(9) A student health plan.
(10) An employer sponsored health benefit plan that is:
(A) provided to individuals who are eligible for Medicare; and
(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 34. IC 27-8-14.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this chapter, "accident and sickness insurance policy" means an insurance policy that:
(1) provides at least one (1) of the types of insurance described in IC 27-1-5-1, Classes 1(b) and 2(a); and
(2) is issued on a group basis.

(b) "Accident and sickness insurance policy" does not include ~~accident only, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance.~~ **the following:**
(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.
(2) Coverage issued as a supplement to liability insurance.
(3) Worker's compensation or similar insurance.
(4) Automobile medical payment insurance.
(5) A specified disease policy.
(6) A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

(7) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

(8) A supplemental plan that always pays in addition to other coverage.

(9) A student health plan.

(10) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 35. IC 27-8-14.8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this chapter, "accident and sickness insurance policy" means an insurance policy that:

(1) provides at least one (1) of the types of insurance described in IC 27-1-5-1, Classes 1(b) and 2(a); and

(2) is issued on a group basis.

(b) "Accident and sickness insurance policy" does not include ~~a policy providing accident only, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance.~~ **the following:**

(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Worker's compensation or similar insurance.

(4) Automobile medical payment insurance.

(5) A specified disease policy.

(6) A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

(7) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

(8) A supplemental plan that always pays in addition to other coverage.

(9) A student health plan.

(10) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 36. IC 27-8-16-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A claim review agent may not conduct medical claims review concerning health care services delivered to an enrollee in Indiana unless the claim review agent holds a certificate of registration issued by the department under this chapter.

(b) To obtain a certificate of registration under this chapter, a claim review agent must submit to the department an application containing the following:

(1) The name, address, telephone number, and normal business hours of the claim review agent.

(2) The name and telephone number of a person that the department may contact concerning the information in the application.

(3) Documentation necessary for the department to determine that the claim review agent is capable of satisfying the minimum requirements set forth in section 7 of this chapter.

(c) An application submitted under this section must be:

(1) signed and verified by the applicant; and

(2) accompanied by an application fee in the amount established under subsection (d).

The commissioner shall deposit an application fee collected under this subsection into the department of insurance fund established by IC 27-1-3-28.

(d) The department shall set the amount of the application fee required by subsection (c) and section 6(a) of this chapter in the rules adopted under section 14 of this chapter. The amount may not be more than is reasonably necessary to generate revenue sufficient to offset the costs incurred by the department in carrying out the department's responsibilities under this chapter.

(e) The department shall issue a certificate of registration to a claim review agent that satisfies the requirements of this section.

SECTION 37. IC 27-8-16-5.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5.2. (a) A person may not act as a claim review consultant concerning health care services delivered to an enrollee in Indiana unless the person holds a certificate of registration issued by the department under this chapter.

(b) To obtain a certificate of registration under this chapter, a person must submit to the department an application containing the following:

(1) The name, address, telephone number, and normal business hours of the person.

(2) The name and telephone number of a person that the department may contact concerning the information in the application.

(3) Documentation necessary for the department to determine that the person is capable of satisfying the minimum requirements set forth in this chapter.

(c) An application submitted under this section must be:

(1) signed and verified by the applicant; and

(2) accompanied by an application fee in the amount established under subsection (d).

The commissioner shall deposit an application fee collected under this subsection into the department of insurance fund established by IC 27-1-3-28.

(d) The department shall set the amount of the application fee required by subsection (c) and section 6(a) of this chapter in the rules adopted under section 14 of this chapter. The amount may not be more than is reasonably necessary to generate revenue sufficient to offset the costs incurred by the department in carrying out the department's responsibilities under this chapter.

(e) The department shall issue a certificate of registration to a claim review consultant that satisfies the requirements of this section.

SECTION 38. IC 27-8-16-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) To remain in effect, a certificate of registration issued under this chapter must be renewed on June 30 of each year. To obtain the renewal of a certificate of registration, a claim review agent or a claim review consultant must submit an application to the commissioner. The application must be accompanied by a registration fee in the amount set under section 5(d) of this chapter. **The commissioner shall deposit a registration fee collected under this subsection into the department of insurance fund established by IC 27-1-3-28.**

(b) A certificate of registration issued under this chapter may not be transferred unless the department determines that the person to which the certificate of registration is to be transferred has satisfied the requirements of this chapter.

(c) If there is a material change in any of the information set forth in an application submitted under this chapter, the claim review agent or claim review consultant that submitted the application shall notify the department of the change in writing not more than thirty (30) days after the change.

SECTION 39. IC 27-8-17-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) A utilization review agent may not conduct utilization review in Indiana unless the utilization review agent holds a certificate of registration issued by the department under this chapter.

(b) To obtain a certificate of registration under this chapter, a utilization review agent must submit to the department an application containing the following:

(1) The name, address, telephone number, and normal business hours of the utilization review agent.

(2) The name and telephone number of a person that the department may contact concerning the information in the application.

(3) Documentation necessary for the department to determine that the utilization review agent is capable of satisfying the minimum requirements set forth in section 11 of this chapter.

(c) An application submitted under this section must be:

(1) signed and verified by the applicant; and

(2) accompanied by an application fee in the amount established under subsection (d).

The commissioner shall deposit an application fee collected under this subsection into the department of insurance fund established by IC 27-1-3-28.

(d) The department shall set the amount of the application fee required by subsection (c) and section 10(a) of this chapter in the rules adopted under section 20 of this chapter. The amount may not be more than is reasonably necessary to generate revenue sufficient to offset the costs incurred by the department in carrying out its responsibilities under this chapter.

(e) The department shall issue a certificate of registration to a utilization review agent that satisfies the requirements of this section.

SECTION 40. IC 27-8-17-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) To remain in effect, a certificate of registration issued under this chapter must be renewed on June 30 of each year. To obtain the renewal of a certificate of registration, a utilization review agent must submit an application to the commissioner. The application must be accompanied by a registration fee in the amount set under section 9(d) of this chapter. **The commissioner shall deposit a registration fee collected under this subsection into the department of insurance fund established by IC 27-1-3-28.**

(b) A certificate of registration issued under this chapter may not be transferred unless the department determines that the entity to whom the certificate is to be transferred has satisfied the requirements of this chapter.

(c) If there is a material change in any of the information set forth in an application submitted under this chapter, the utilization review agent that submitted the application shall notify the department of the change in writing within thirty (30) days after the change.

SECTION 41. IC 27-8-24.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a)** As used in this chapter, "accident and sickness insurance policy" ~~has the meaning set forth in IC 27-8-5-27(a).~~ **means an insurance policy that provides at least one (1) of the types of insurance described in IC 27-1-5-1, Classes 1(b) and 2(a), and is issued on a group basis.**

(b) The term does not include the following:

(1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Worker's compensation or similar insurance.

(4) Automobile medical payment insurance.

(5) A specified disease policy.

(6) A short term insurance plan that:

(A) may not be renewed; and

(B) has a duration of not more than six (6) months.

(7) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(A) hospital confinement, critical illness, or intensive care; or

(B) gaps for deductibles or copayments.

(8) A supplemental plan that always pays in addition to other coverage.

(9) A student health plan.

(10) An employer sponsored health benefit plan that is:

(A) provided to individuals who are eligible for Medicare; and

(B) not marketed as, or held out to be, a Medicare supplement policy.

SECTION 42. IC 27-8-29-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 15.5. Upon the request of a covered individual who is notified under section 15(d) of this chapter that the independent review organization has made a determination, the independent review organization shall provide to the covered individual all information reasonably necessary to enable the covered individual to understand the:**

(1) effect of the determination on the covered individual; and

(2) manner in which the insurer may be expected to respond to the determination.

SECTION 43. IC 27-13-10.1-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4.5. Upon the request of an enrollee who is notified under section 4(c) of this chapter that the independent review organization has made a determination, the independent review organization shall provide to the enrollee all information reasonably necessary to enable the enrollee to understand the:**

(1) effect of the determination on the enrollee; and

(2) manner in which the health maintenance organization may be expected to respond to the determination.

SECTION 44. IC 27-13-27-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. Each health maintenance organization subject to this article shall pay to the commissioner **for deposit into the department of insurance fund established by IC 27-1-3-28** the following fees:

(1) Three hundred fifty dollars ($350) for filing:

(A) an application for a certificate of authority; or

(B) an application for an amendment to a certificate of authority.

(2) Fifty dollars ($50) for filing each annual report.

SECTION 45. IC 27-13-34-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 23. (a) A limited service health maintenance organization subject to this chapter shall pay to the commissioner **for deposit into the department of insurance fund established by IC 27-1-3-28** the following fees:

(1) For filing an application for a certificate of authority or an amendment to an application, three hundred fifty dollars ($350).

(2) For filing each annual report, fifty dollars ($50).

(b) In addition to the fees required by subsection (a), a limited service health maintenance organization subject to this chapter must pay the fees required by IC 27-1-3-15.

SECTION 46. IC 36-8-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) The department and a trustee may establish and operate an actuarially sound pension trust as a retirement plan for the exclusive benefit of the employee beneficiaries. However, a department and a trustee may not establish or modify a retirement plan after June 30, 1989, without the approval of the county fiscal body which shall not reduce or diminish any benefits of the employee beneficiaries set forth in any retirement plan that was in effect on January 1, 1989.

(b) The normal retirement age may be earlier but not later than the age of seventy (70). However, the sheriff may retire an employee who is otherwise eligible for retirement if the board finds that the employee is not physically or mentally capable of performing the employee's duties.

(c) Joint contributions shall be made to the trust fund:

(1) either by:

(A) the department through a general appropriation provided to the department;

(B) a line item appropriation directly to the trust fund; or

(C) both; and

(2) by an employee beneficiary through authorized monthly deductions from the employee beneficiary's salary or wages. However, the employer may pay all or a part of the contribution for the employee beneficiary.

Contributions through an appropriation are not required for plans established or modifications adopted after June 30, 1989, unless the establishment or modification is approved by the county fiscal body.

(d) For a county not having a consolidated city, the monthly deductions from an employee beneficiary's wages for the trust fund may not exceed six percent (6%) of the employee beneficiary's average monthly wages. For a county having a consolidated city, the monthly deductions from an employee beneficiary's wages for the trust fund may not exceed seven percent (7%) of the employee beneficiary's average monthly wages.

(e) The minimum annual contribution by the department must be sufficient, as determined by the pension engineers, to prevent deterioration in the actuarial status of the trust fund during that year. If the department fails to make minimum contributions for three (3) successive years, the pension trust terminates and the trust fund shall be liquidated.

(f) If during liquidation all expenses of the pension trust are paid, adequate provision must be made for continuing pension payments to retired persons. Each employee beneficiary is entitled to receive the net amount paid into the trust fund from the employee beneficiary's wages, and any remaining sum shall be equitably divided among employee beneficiaries in proportion to the net amount paid from their wages into the trust fund.

(g) If a person ceases to be an employee beneficiary because of death, disability, unemployment, retirement, or other reason, the person, the person's beneficiary, or the person's estate is entitled to receive at least the net amount paid into the trust fund from the person's wages, either in a lump sum or monthly installments not less than the person's pension amount.

(h) If an employee beneficiary is retired for old age, the employee beneficiary is entitled to receive a monthly income in the proper amount of the employee beneficiary's pension during the employee beneficiary's lifetime.

(i) To be entitled to the full amount of the employee beneficiary's pension classification, an employee beneficiary must have contributed at least twenty (20) years of service to the department before retirement. Otherwise, the employee beneficiary is entitled to receive a pension proportional to the length of the employee beneficiary's service.

(j) This subsection does not apply to a county that adopts an ordinance under section 12.1 of this chapter. For an employee beneficiary who retires before January 1, 1985, a monthly pension may not exceed by more than twenty dollars ($20) one-half (1/2) the amount of the average monthly wage received during the highest paid five (5) years before retirement. However, in counties where the fiscal body approves the increases, the maximum monthly pension for an employee beneficiary who retires after December 31, 1984, may be increased by no more or no less than two percent (2%) of that average monthly wage for each year of service over twenty (20) years to a maximum of seventy-four percent (74%) of that average monthly wage plus twenty dollars ($20). For the purposes of determining the amount of an increase in the maximum monthly pension approved by the fiscal body for an employee beneficiary who retires after December 31, 1984, the fiscal body may determine that the employee beneficiary's years of service include the years of service with the sheriff's department that occurred before the effective date of the pension trust. For an employee beneficiary who retires after June 30, 1996, the average monthly wage used to determine the employee beneficiary's pension benefits may not exceed the monthly minimum salary that a

full-time prosecuting attorney was entitled to be paid by the state at the time the employee beneficiary retires.

(k) The trust fund may not be commingled with other funds, except as provided in this chapter, and may be invested only in accordance with statutes for investment of trust funds, including other investments that are specifically designated in the trust agreement.

(l) The trustee receives and holds as trustee all money paid to it as trustee by the department, the employee beneficiaries, or by other persons for the uses stated in the trust agreement.

(m) The trustee shall engage pension engineers to supervise and assist in the technical operation of the pension trust in order that there is no deterioration in the actuarial status of the plan.

(n) Within ninety (90) days after the close of each fiscal year, the trustee, with the aid of the pension engineers, shall prepare and file an annual report with the department. ~~and the state insurance department.~~ The report must include the following:

(1) Schedule 1. Receipts and disbursements.

(2) Schedule 2. Assets of the pension trust listing investments by book value and current market value as of the end of the fiscal year.

(3) Schedule 3. List of terminations, showing the cause and amount of refund.

(4) Schedule 4. The application of actuarially computed "reserve factors" to the payroll data properly classified for the purpose of computing the reserve liability of the trust fund as of the end of the fiscal year.

(5) Schedule 5. The application of actuarially computed "current liability factors" to the payroll data properly classified for the purpose of computing the liability of the trust fund as of the end of the fiscal year.

(o) No part of the corpus or income of the trust fund may be used or diverted to any purpose other than the exclusive benefit of the members and the beneficiaries of the members.

SECTION 47. IC 16-39-9-3 IS REPEALED [EFFECTIVE JULY 1, 2007].

SECTION 48. [EFFECTIVE JULY 1, 2007] **(a) As used in this SECTION, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.**

(b) As used in this SECTION, "committee" refers to the interim study committee to define "health insurance" established by subsection (c).

(c) There is established the interim study committee to define "health insurance". The committee shall only study and make recommendations to the general assembly concerning the manner in which accident and sickness insurance policies, self-insured plans, and health maintenance organization contracts that provide coverage for health care services are defined in the Indiana Code.

(d) The committee consists of the following members:

(1) Four (4) members of the house of representatives, to be appointed by the speaker of the house of representatives, not more than two (2) of whom may represent the same political party.

(2) Four (4) members of the senate, to be appointed by the president pro tempore of the senate, not more than two (2) of whom may represent the same political party.

(e) The committee shall operate under the policies governing study committees adopted by the legislative council.

(f) The affirmative votes of a majority of the members appointed to the committee are required for the committee to take action on any measure, including final reports.

(g) The committee shall submit a final report to the legislative council not later than October 31, 2007.

(h) This SECTION expires December 31, 2007.

SECTION 49. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.**

(b) As used in this SECTION, "program" refers to the health care management program established under subsection (d).

(c) As used in this SECTION, "recipient" means a Medicaid recipient under IC 12-15.

(d) The office may work with one (1) or more health care providers to establish and implement a demonstration project for a health care management program under which the health care providers provide health care services to recipients. If a demonstration project is established and implemented, the program must allow the office to do the following:

(1) Offer to recipients who currently receive health care services from the health care providers the opportunity to continue to receive Medicaid services provided solely by the health care providers as part of the demonstration project. The offer must be extended to a number of recipients that is sufficiently large to result in a percentage of recipients accepting the offer to provide meaningful data to guide the establishment and implementation of the program under subdivision (2). A recipient is not required to participate in the demonstration project.

(2) Establish and implement a program of health care management modeled on the United States Department of Veterans Affairs Quality Enhancement Research Initiative, including use of payment incentives for:

(A) individual health care providers; and

(B) administrators;

of the health care providers with which the office works under this SECTION to reward the achievement of objectives established for the program.

(e) The office and the health care providers described in subsection (d) shall study the impact of implementing the program under subsection (d)(2), including the impact the program has on the:

(1) quality; and

(2) cost;

of health care provided to recipients.

(f) The office shall consult with the Regenstrief Institute for Health Care or a comparable institution in developing, implementing, and studying the program.

(g) The office shall apply to the United States Department of Health and Human Services for any amendment to the state Medicaid plan or demonstration waiver that is needed to implement this SECTION. A health care provider described in subsection (d) shall assist the office in requesting the amendment or demonstration waiver and, if the amendment or waiver is approved, establishing and implementing the amendment or waiver.

(h) The office may not implement the amendment or waiver until the office files an affidavit with the governor attesting that the amendment or waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not more than five (5) days after the office is notified that the amendment or waiver is approved.

(i) If the office receives approval for the amendment or waiver under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (h), the office shall implement the amendment or waiver not more than sixty (60) days after the governor receives the affidavit.

(j) The office may adopt rules under IC 4-22-2 to implement this SECTION.

(k) The office shall, before July 1 of each year, report to the legislative council in an electronic format under IC 5-14-6 concerning a demonstration project established and implemented under this SECTION.

(l) Notwithstanding subsections (d) through (k), if the office determines that establishing and implementing a demonstration project under this SECTION is not feasible, the office shall report the determination of infeasibility to the legislative council in an electronic format under IC 5-14-6 not later than June 30, 2008.

(m) This SECTION expires January 1, 2013.

SECTION 50. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "insurer" includes the following:**

(1) An insurer (as defined in IC 27-8-11-1).

(2) An administrator licensed under IC 27-1-25.

(3) A health maintenance organization (as defined in IC 27-13-1-19).

(4) A person that pays or administers claims on behalf of an insurer or a health maintenance organization.

(b) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(c) As used in this SECTION, "small employer" has the meaning set forth in IC 27-8-15-14.

(d) Before June 1, 2008, the office may develop, with one (1) or more organizations that provide health care services, a pilot project through which small employers that are unable to afford to offer health care coverage for employees of the small employers may obtain access to affordable health care coverage for the employees.

(e) The office may adopt rules under IC 4-22-2 to implement this SECTION.

(f) If the pilot project results in the availability of health care coverage to small employer groups through the pilot project at a premium rate that is at least twenty percent (20%) less than a comparable health benefit plan available to small employer groups in Indiana, an insurer may not enter into or enforce an agreement with the organization with which the pilot project is developed that contains a provision that:

(1) prohibits, or grants the insurer an option to prohibit, the organization from contracting with another insurer to accept lower payment for health care services than the payment specified in the agreement;

(2) requires, or grants the insurer an option to require, the organization to accept a lower payment from the insurer if the organization agrees with another insurer to accept lower payment for health care services;

(3) requires, or grants the insurer an option to require, termination, or renegotiation of the agreement if the organization agrees with another insurer to accept lower payment for health care services; or

(4) requires the organization to disclose the organization's reimbursement rates under contracts with other insurers.

(g) The office shall report to the legislative council in an electronic format under IC 5-14-6 concerning the development and implementation of a pilot project under this SECTION before December 1, 2008.

(h) Notwithstanding subsections (e) through (g), if the office determines that developing a pilot project under this SECTION is not feasible, the office shall report the determination of infeasibility to the legislative council in an electronic format under IC 5-14-6 not later than December 1, 2008.

(i) This SECTION expires December 31, 2013.

SECTION 51. **An emergency is declared for this act.**

(Reference is to EHB 1452 as reprinted April 3, 2007.)

Klinker, Chair	Paul
Ripley	Simpson
House Conferees	Senate Conferees

Roll Call 479: yeas 45, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

EHB 1457–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill 1457 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 16-18-2-160.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 160.5. "Health care entity", for purposes of IC 16-41-42, has the meaning set forth in IC 16-41-42-1.**

SECTION 2. IC 16-38-4-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. ~~(a) During the year 2006, a committee of the general assembly shall review the need to continue the registry. The committee shall submit its recommendations in an electronic format under IC 5-14-6 to the general assembly before December 31, 2006.~~

~~(b)~~ The registry is abolished July 1, ~~2007.~~ **2017.**

SECTION 3. IC 16-41-42 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 42. Registration of Out-of-State Mobile Health Care Entities

Sec. 1. As used in this chapter, "health care entity" means an entity that:

(1) is registered or licensed as a health care entity under the laws of another state, a foreign country, or a province in a foreign country; and

(2) provides health care services, including the performance of health care tests, in a mobile facility or temporary location for a short period of time.

Sec. 2. The state department shall maintain a registry of health care entities that apply for and meet the registration requirements under this chapter.

Sec. 3. The registry must include the information required under section 5(6) of this chapter for each registered health care entity and the date that the health care entity registered with the state department under this chapter.

Sec. 4. The state department shall issue a certificate of registration to a health care entity that applies for registration and meets the requirements of this chapter.

Sec. 5. A health care entity applying for registration under this chapter shall disclose the following:

(1) The types of health care services that the health care entity will provide in Indiana.

(2) The names of any employees who are currently in good standing licensed, certified, or registered in a health care profession in:

(A) Indiana; or

(B) any other state;

and a copy of the employee's license, certification, or registration.

(3) Any health care services that are to be provided under a contract between the health care entity and a person that is licensed, certified, or registered in Indiana to provide health care services.

(4) The types of:

(A) health care services;

(B) health care tests; and

(C) equipment;

that the health care entity will perform or use.

(5) The manner in which test results and recommendations for health care based on the results are disclosed to the patient.

(6) The health care entity's name, address, and telephone number and the name of any company that is affiliated with the health care entity.

Sec. 6. A registered health care entity shall display the entity's certificate of registration in a conspicuous place in sight of a consumer of the health care entity.

Sec. 7. A certificate of registration expires one (1) calendar year after its issuance.

Sec. 8. A health care entity may not provide services in Indiana until the health care entity is registered under this chapter with the state department.

Sec. 9. Registration of a health care entity under this chapter does not exempt:

(1) a health care professional from the licensure, certification, and registration requirements of IC 25; or

(2) a health care service from the regulation requirements of IC 16 or IC 25.

Sec. 10. The state department shall adopt rules under IC 4-22-2 necessary to implement this chapter, including rules specifying registration renewal procedures.

SECTION 4. IC 25-1-7-1, AS AMENDED BY SEA 506-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter:

"Board" means the appropriate agency listed in the definition of regulated occupation in this section.

"Director" refers to the director of the division of consumer protection.

"Division" refers to the division of consumer protection, office of the attorney general.

"Licensee" means a person who is:

(1) licensed, certified, or registered by a board listed in this section; and

(2) the subject of a complaint filed with the division.

"Person" means an individual, a partnership, a limited liability company, or a corporation.

"Regulated occupation" means an occupation in which a person is licensed, certified, or registered by one (1) of the following:

(1) Indiana board of accountancy (IC 25-2.1-2-1).

(2) Board of registration for architects, landscape architects, and registered interior designers (IC 25-4-1-2).

(3) Indiana auctioneer commission (IC 25-6.1-2-1).

(4) State board of barber examiners (IC 25-7-5-1).

(5) State boxing commission (IC 25-9-1).

(6) Board of chiropractic examiners (IC 25-10-1).

(7) State board of cosmetology examiners (IC 25-8-3-1).

(8) State board of dentistry (IC 25-14-1).

(9) State board of funeral and cemetery service (IC 25-15-9).

(10) State board of registration for professional engineers (IC 25-31-1-3).

(11) Indiana state board of health facility administrators (IC 25-19-1).

(12) Medical licensing board of Indiana (IC 25-22.5-2).

(13) Indiana state board of nursing (IC 25-23-1).

(14) Indiana optometry board (IC 25-24).

(15) Indiana board of pharmacy (IC 25-26).

(16) Indiana plumbing commission (IC 25-28.5-1-3).

(17) Board of podiatric medicine (IC 25-29-2-1).

(18) Board of environmental health specialists (IC 25-32-1).

(19) State psychology board (IC 25-33).

(20) Speech-language pathology and audiology board (IC 25-35.6-2).

(21) Indiana real estate commission (IC 25-34.1-2).

(22) Indiana board of veterinary medical examiners (IC 15-5-1.1).

(23) Department of natural resources for purposes of licensing water well drillers under IC 25-39-3.

(24) Respiratory care committee (IC 25-34.5).

(25) Private investigator and security guard licensing board (IC 25-30-1-5.2).

(26) Occupational therapy committee (IC 25-23.5).

(27) Social worker, marriage and family therapist, and mental health counselor board (IC 25-23.6).

(28) Real estate appraiser licensure and certification board (IC 25-34.1-8).

(29) State board of registration for land surveyors (IC 25-21.5-2-1).

(30) Physician assistant committee (IC 25-27.5).

(31) Indiana athletic trainers board (IC 25-5.1-2-1).

(32) Indiana dietitians certification board (IC 25-14.5-2-1).

(33) Indiana hypnotist committee (IC 25-20.5-1-7).

(34) Indiana physical therapy committee (IC 25-27).

(35) Manufactured home installer licensing board (IC 25-23.7).

(36) Home inspectors licensing board (IC 25-20.2-3-1).

(37) State department of health.

~~(37)~~ **(38)** Any other occupational or professional agency created after June 30, 1981.

SECTION 5. [EFFECTIVE JULY 1, 2007] **(a) As used in this SECTION, "commission" refers to the prenatal substance abuse commission established by subsection (b).**

(b) The prenatal substance abuse commission is established to develop and recommend a coordinated plan to improve early intervention and treatment for pregnant women who abuse alcohol or drugs or use tobacco.

(c) The commission consists of the following members:

(1) The state health commissioner or the commissioner's designee.

(2) The director of the division of mental health and addiction or the director's designee.

(3) The director of the office of Medicaid policy and planning or the director's designee.

(4) The director of the department of child services or the director's designee.

(5) One (1) physician specializing in addiction treatment of pregnant women.

(6) One (1) physician specializing in the care of pregnant women.

(7) One (1) social worker certified in the treatment of alcohol, tobacco, and other drug abuse.

(8) One (1) woman who has received treatment for alcohol, tobacco, or other drug abuse during pregnancy.

(9) One (1) advocate recommended by the March of Dimes, Indiana Chapter.

(10) One (1) prosecuting attorney or a deputy prosecuting attorney who practices in a drug court established under IC 12-23-14.5.

(11) One (1) judge of a drug court established under IC 12-23-14.5.

(12) Two (2) members of the house of representatives. The members appointed under this subdivision may not be members of the same political party.

(13) Two (2) members of the senate. The members appointed under this subdivision may not be members of the same political party.

(14) An advanced practice nurse who has a collaborative agreement with a physician who specializes in addiction treatment for pregnant women or the care of pregnant women.

The speaker of the house of representatives shall appoint the members under subdivisions (5), (7), (9), (10), and (12) not later than August 15, 2007. The president pro tempore of the senate shall appoint the members under subdivisions (6), (8), (11), (13), and (14) not later than August 15, 2007. Vacancies shall be filled by the appointing authority for the remainder of the unexpired term.

(d) A majority of the members of the commission constitutes a quorum.

(e) The state department of health shall provide staff and administrative support for the commission.

(f) The state health commissioner or the commissioner's designee shall convene the first meeting of the commission before October 15, 2007. The commission shall elect a member of the commission to serve as chairperson of the commission. The commission shall meet at the call of the chairperson and shall meet as often as necessary to carry out the purpose of this SECTION. However, the commission shall meet at least quarterly.

(g) Members of the commission are not entitled to a salary per diem or reimbursement of expenses for service on the commission.

(h) The affirmative votes of a majority of the commission's members are required for the commission to take action on any measure.

(i) The commission shall submit reports to the governor and the legislative council as follows:

(1) Not later than August 15, 2008, an interim report that contains any interim findings and recommendations of the commission.

(2) Not later than August 15, 2009, a final report that contains the findings and recommendations of the commission and an implementation plan to improve early intervention and treatment for pregnant women who abuse alcohol or drugs or use tobacco.

The reports required under this subsection must be submitted in an electronic format under IC 5-14-6.

(j) This SECTION expires December 31, 2009.

SECTION 6. **An emergency is declared for this act.**

(Reference is to EHB 1457 as reprinted March 23, 2007.)

Klinker, Chair	Lawson
Thompson	Rogers
House Conferees	Senate Conferees

Roll Call 480: yeas 45, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

EHB 1663–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill 1663 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-10-8-1, AS AMENDED BY SEA 526-2007, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. The following definitions apply in this chapter:

(1) "Employee" means:

(A) an elected or appointed officer or official, or a

full-time employee;

(B) if the individual is employed by a school corporation, a full-time or part-time employee;

(C) for a local unit public employer, a full-time or part-time employee or a person who provides personal services to the unit under contract during the contract period; or

(D) a senior judge appointed under IC 33-24-3-7;

whose services have continued without interruption at least thirty (30) days.

(2) "Group insurance" means any of the kinds of insurance fulfilling the definitions and requirements of group insurance contained in IC 27-1.

(3) "Insurance" means insurance upon or in relation to human life in all its forms, including life insurance, health insurance, disability insurance, accident insurance, hospitalization insurance, surgery insurance, medical insurance, and supplemental medical insurance.

(4) "Local unit" includes a city, town, county, township, public library, **municipal corporation (as defined in IC 5-10-9-1),** or school corporation.

(5) "New traditional plan" means a self-insurance program established under section 7(b) of this chapter to provide health care coverage.

(6) "Public employer" means the state or a local unit, including any board, commission, department, division, authority, institution, establishment, facility, or governmental unit under the supervision of either, having a payroll in relation to persons it immediately employs, even if it is not a separate taxing unit. With respect to the legislative branch of government, "public employer" or "employer" refers to the following:

(A) The president pro tempore of the senate, with respect to former members or employees of the senate.

(B) The speaker of the house, with respect to former members or employees of the house of representatives.

(C) The legislative council, with respect to former employees of the legislative services agency.

(7) "Public employer" does not include a state educational institution.

(8) "Retired employee" means:

(A) in the case of a public employer that participates in the public employees' retirement fund, a former employee who qualifies for a benefit under IC 5-10.3-8 or IC 5-10.2-4;

(B) in the case of a public employer that participates in the teachers' retirement fund under IC 5-10.4, a former employee who qualifies for a benefit under IC 5-10.4-5; and

(C) in the case of any other public employer, a former employee who meets the requirements established by the public employer for participation in a group insurance plan for retired employees.

(9) "Retirement date" means the date that the employee has chosen to receive retirement benefits from the employees' retirement fund.

SECTION 2. IC 12-7-2-82, AS AMENDED BY SEA 94-2007, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 82. "Facility" means the following:

(1) For purposes of IC 12-17-12, the meaning set forth in IC 12-17-12-3.

(2) For purposes of IC 12-17-13, the meaning set forth in IC 12-17-13-2.

(3) For purposes of IC 12-26, **a hospital, a health and hospital corporation established under IC 16-22-8,** a psychiatric hospital, a community mental health center, another institution, a program, a managed care provider, or a child caring institution:

(A) where an individual with a mental illness can receive rehabilitative treatment, or habilitation and care, in the least restrictive environment suitable for the necessary care, treatment, and protection of the individual and others; and

(B) that has adequate space and treatment staff appropriate to the needs of the individual as determined by the superintendent of the facility.

The term includes all services, programs, and centers of the facility, wherever located.

(4) For purposes of IC 12-15-32, the meaning set forth in IC 12-15-32-1.

SECTION 3. IC 16-22-8-31, AS AMENDED BY P.L.138-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 31. (a) The director of the division of public health has the powers, functions, and duties of a local health officer.

(b) Orders, citations, and administrative notices of violation issued by the director of the division of public health, the director's authorized representative, a supervisor in the division, or an environmental health specialist may be enforced by the corporation in a court with jurisdiction by filing a civil action in accordance with IC 16-42-5-28, IC 33-36-3-5(b), **IC 34-28-5-1,** ~~or~~ IC 36-1-6-4, **or IC 36-7-9-17.**

(c) A public health authority may petition a circuit or superior court for an order of isolation or quarantine by filing a civil action in accordance with IC 16-41-9.

(d) Unless otherwise provided by law, a change of venue from the county may not be granted for court proceedings initiated under this section.

(e) A change of venue from a judge must meet the requirements in IC 34-35-3-3 for court proceedings initiated under this section.

SECTION 4. IC 16-22-8-34, AS AMENDED BY HEA 1084-2007, SECTION 132, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 34. (a) The board or corporation may do all acts necessary or reasonably incident to carrying out the purposes of this chapter, including the following:

(1) As a municipal corporation, sue and be sued in any court with jurisdiction.

(2) To serve as the exclusive local board of health and local department of health within the county with the powers and duties conferred by law upon local boards of health and local departments of health.

(3) To adopt and enforce ordinances consistent with Indiana law and administrative rules for the following purposes:

(A) To protect property owned or managed by the corporation.

(B) To determine, prevent, and abate public health nuisances.

(C) To establish **isolation and** quarantine regulations ~~impose restrictions on persons having infectious or contagious diseases and contacts of the persons, and regulate the disinfection of premises.~~ **in accordance with IC 16-41-9.**

(D) To license, regulate, and establish minimum sanitary standards for the operation of a business handling, producing, processing, preparing, manufacturing, packing, storing, selling, distributing, or transporting articles used for food, drink, confectionery, or condiment in the interest of the public health.

(E) To control:

(i) rodents, mosquitos, and other animals, including insects, capable of transmitting microorganisms and disease to humans and other animals; and

(ii) the animals' breeding places.

(F) To require persons to connect to available sewer systems and to regulate the disposal of domestic or sanitary sewage by private methods. However, the board and corporation have no jurisdiction over publicly owned or financed sewer systems or sanitation and disposal plants.

(G) To control rabies.

(H) For the sanitary regulation of water supplies for domestic use.

(I) To protect, promote, or improve public health. For public health activities and to enforce public health laws, the state health data center described in IC 16-19-10 shall provide health data, medical information, and epidemiological information to the corporation.

(J) To detect, report, prevent, and control disease affecting public health.

(K) To investigate and diagnose health problems and health hazards.

(L) To regulate the sanitary and structural conditions of residential and nonresidential buildings and unsafe premises.

(M) To regulate the remediation of lead hazards.

~~(M)~~ **(N)** To license and regulate the design, construction, and operation of public pools, spas, and beaches.

~~(N)~~ **(O)** To regulate the storage, containment, handling, use, and disposal of hazardous materials.

~~(O)~~ **(P)** To license and regulate tattoo ~~parlors~~ and body piercing facilities.

(Q) To regulate the storage and disposal of waste tires.

(4) To manage the corporation's hospitals, medical facilities, and mental health facilities.

(5) To ~~furnish~~ **provide school based** health ~~and nursing~~ services. ~~to elementary and secondary schools within the county.~~

(6) To furnish medical care to ~~the indigent within~~ **insured and uninsured residents of** the county. ~~unless medical care is furnished to the indigent by the division of family resources.~~

(7) To ~~determine the~~ **establish** public health ~~policies and~~ programs. ~~to be carried out and administered by the corporation.~~

(8) To adopt an annual budget ordinance and levy taxes.

(9) To incur indebtedness in the name of the corporation.

(10) To organize ~~the personnel and functions of~~ the corporation into divisions. ~~and subdivisions to carry out the corporation's powers and duties and to consolidate, divide, or abolish the divisions and subdivisions.~~

(11) To acquire and dispose of property.

(12) To receive charitable contributions and gifts as provided in 26 U.S.C. 170.

(13) To make charitable contributions and gifts.

(14) To establish a charitable foundation as provided in 26 U.S.C. 501.

(15) To receive and distribute federal, state, local, or private grants.

(16) To receive and distribute grants from charitable foundations.

(17) To establish ~~nonprofit~~ corporations **and enter into partnerships and joint ventures** to carry out the purposes of the corporation. **This subdivision does not authorize the merger of the corporation with a hospital licensed under IC 16-21.**

(18) To erect, **improve, remodel, or repair corporation** buildings. ~~or structures or improvements to existing buildings or structures.~~

(19) To determine ~~matters of policy regarding internal organization and~~ operating procedures.

(20) To do the following:

(A) Adopt a schedule of reasonable charges for nonresidents of the county for medical and mental health services.

(B) Collect the charges from the patient, **the patient's insurance company,** or ~~from the governmental unit where the patient resided at the time of the service.~~ **a government program.**

(C) Require security for the payment of the charges.

(21) To adopt a schedule of and to collect reasonable charges for ~~patients able to pay in full or in part.~~ **medical and mental health services.**

(22) To enforce Indiana laws, administrative rules, **ordinances,** and the code of the health and hospital corporation of the county.

(23) To purchase supplies, materials, and equipment. ~~for the corporation.~~

(24) To employ personnel and establish personnel policies. ~~to carry out the duties, functions, and powers of the corporation.~~

(25) To employ attorneys admitted to practice law in Indiana.

(26) To acquire, erect, equip, and operate the corporation's hospitals, medical facilities, and mental health facilities.

(27) To dispose of surplus property in accordance with a policy by the board.

(28) To determine the duties of officers and division directors.

(29) To fix the compensation of the officers and division directors.

(30) To carry out the purposes and object of the corporation.

(31) To obtain loans for hospital expenses in amounts and upon terms agreeable to the board. The board may secure the loans by pledging accounts receivable or other security in hospital funds.

(32) To establish fees for licenses, services, and records. The corporation may accept payment by credit card for fees.

(33) To use levied taxes or other funds to make intergovernmental transfers to the state to fund governmental health care programs, including Medicaid and Medicaid supplemental programs.

(b) The board shall exercise the board's powers and duties in a manner consistent with Indiana law, administrative rules, and the code of the health and hospital corporation of the county.

SECTION 5. IC 16-22-8-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 42. If the ~~board~~ **corporation** and the owner of real property desired for **a** hospital, **a health care facility,** or ~~other purposes in carrying out this chapter~~ **an administrative facility** cannot agree on the price, the corporation has the right to condemn. Condemnation proceedings may be instituted in the name of the corporation under IC 32-24.

SECTION 6. IC 16-22-8-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 43. (a) The ~~board~~ **corporation** may issue general obligation bonds ~~of the corporation~~ to procure funds to pay the cost of acquiring real property or constructing, enlarging, improving, remodeling, repairing, or equipping buildings ~~and other structures~~ for use as ~~or in connection with hospitals, clinics, health centers, dispensaries,~~ **a hospital, a health care facility,** or ~~for~~ **an** administrative ~~purposes.~~ **facility.** The issuance of the bonds shall be authorized by ~~ordinance of the~~ **a** board **resolution** providing for the amount, terms, and tenor of the bonds, for the time and character of notice, and the mode of making the sale. The bonds shall be payable not more than forty (40) years after the date of issuance. ~~and~~ **The bonds** shall be executed in the name of the corporation by the ~~chairman of the board and attested by the~~ executive director. ~~who shall affix to each of the bonds the official seal of the corporation. The interest coupons attached to the bonds may be executed by facsimile signature of the chairman of the board.~~

(b) The executive director shall manage and supervise the preparation, advertisement, and sale of bonds, subject to the provisions of the authorizing ~~ordinance.~~ **resolution.** Before the sale of the bonds, the executive director shall publish notice of the sale in accordance with IC 5-3-1, setting out the time and place where bids will be received, the amount and maturity dates of the issue, the maximum interest rate, and the terms and conditions of sale and delivery of the bonds. The bonds shall be sold to the highest and best bidder. After the bonds have been sold and executed, the executive director shall deliver the bonds to the treasurer of the corporation and take the treasurer's receipt, and shall certify to the treasurer the amount that the purchaser is to pay, together with the name and address of the purchaser. On payment of the purchase price, the treasurer shall deliver the bonds to the purchaser, and the treasurer and executive director shall report the actions to the board.

(c) IC 5-1 and IC 6-1.1-20 apply to the following proceedings:

(1) Notice and filing of the petition requesting the issuance of the bonds.

(2) Notice of determination to issue bonds.

(3) Notice of hearing on the appropriation of the proceeds of the bonds and the right of taxpayers to appeal and be heard.

(4) Approval by the department of local government finance.

(5) The right to remonstrate.

(6) Sale of bonds at public sale for not less than the par value.

(d) The bonds are the direct general obligations of the corporation and are payable out of unlimited ad valorem taxes levied and collected on all the taxable property within the county of the corporation. All officials and bodies having to do with the levying of taxes for the corporation shall see that sufficient levies are made to meet the principal and interest on the bonds at the time fixed for payment.

(e) The bonds are exempt from taxation for all purposes but the interest is subject to the adjusted gross income tax.

SECTION 7. IC 32-21-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. **(a)** For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be:

(1) acknowledged by the grantor; or

(2) proved before a:

(A) judge;

(B) clerk of a court of record;

(C) county auditor;

(D) county recorder;

(E) notary public;

(F) mayor of a city in Indiana or any other state;

(G) commissioner appointed in a state other than Indiana by the governor of Indiana;

(H) minister, charge d'affaires, or consul of the United States in any foreign country;

(I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;

(J) clerk-treasurer for a town; or

(K) person authorized under IC 2-3-4-1.

(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. If the mailing address on the conveyance is not a street address or a rural route address of the grantee, the conveyance must also include a street address or rural route address of the grantee after the mailing address.

SECTION 8. IC 36-1-6-2, AS AMENDED BY P.L.88-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) If a condition violating an ordinance of a municipal corporation exists on real property, employees or contractors of a municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located. The lien is superior to all other liens except liens for taxes, in an amount that

does not exceed:

(1) ~~two thousand five hundred dollars ($2,500)~~ **ten thousand dollars ($10,000)** for real property that:

(A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B) is unimproved; or

(2) ~~ten thousand dollars ($10,000)~~ **twenty thousand dollars ($20,000)** for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or

(2) an instrument for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

SECTION 9. IC 36-1-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. **(a)** A municipal corporation may bring a civil action ~~to enjoin any~~ **as provided in IC 34-28-5-1 if a** person: ~~from:~~

(1) ~~violating~~ **violates** an ordinance regulating or prohibiting a condition or use of property; or

(2) ~~engaging~~ **engages** in conduct without a license **or permit** if an ordinance requires a license **or permit** to engage in the conduct.

(b) A court may take any appropriate action in a proceeding under this section, including any of the following actions:

(1) Issuing an injunction.

(2) Entering a judgment.

(3) Ordering an inspection.

(4) Ordering a property vacated.

(5) Imposing a penalty not to exceed an amount set forth in IC 36-1-3-8(a)(10).

(6) Imposing court costs and fees in accordance with IC 33-37-4-2 and IC 33-37-5.

(7) Ordering a defendant to take appropriate action to bring a property into compliance with an ordinance within a specified time.

(8) Ordering a municipal corporation to take appropriate action to bring a property into compliance with an ordinance in accordance with IC 36-1-6-2.

SECTION 10. IC 36-1-10-1, AS AMENDED BY P.L.2-2006, SECTION 186, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to:

(1) political subdivisions and agencies of political subdivisions that determine to acquire structures, transportation projects, or systems by lease or lease-purchase;

(2) a convention and visitor bureau established under IC 6-9-2 that determines to acquire a visitor center by lease or lease purchase; and

(3) a convention and visitor commission established by IC 6-9-11 that determines to acquire a sports and recreation facility by lease or lease purchase.

(b) This chapter does not apply to:

(1) the lease of library buildings under IC 36-12-10, unless the library board of the public library adopts a resolution to proceed under this chapter instead of IC 36-12-10;

(2) the lease of school buildings under IC 20-47;

~~(3) county hospitals organized or operating under IC 16-22-1 through IC 16-22-5;~~

~~(4) municipal hospitals organized or operating under IC 16-23-1; or~~

(3) a hospital established and operated under IC 16-22 or IC 16-23;

(4) a health and hospital corporation established and operated under IC 16-22-8; or

(5) boards of aviation commissioners established under IC 8-22-2.

SECTION 11. IC 36-1-10.5-1, AS AMENDED BY P.L.2-2006, SECTION 187, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to:

(1) political subdivisions; and

(2) their agencies.

(b) This chapter does not apply to the purchase of:

(1) real property having a total price (including land and structures, if any) of twenty-five thousand dollars ($25,000) or less;

(2) airport land or structures under IC 8-22;

(3) library land or structures under IC 36-12;

(4) school land or structures under IC 20-47;

(5) hospital land or structures by ~~hospitals~~ **a hospital or health and hospital corporation** ~~organized or~~ **established and** operated under ~~IC 16-22-1 through IC 16-22-5 or IC 16-23-1,~~ **IC 16-22 or IC 16-23;**

(6) land or structures acquired for a road or street right-of-way for a federal-aid project funded in any part under 23 U.S.C. 101 et seq.;

(7) land or structures by redevelopment commissions under IC 36-7-14 or IC 36-7-15.1, or redevelopment authorities under IC 36-7-14.5; or

(8) land by a municipally owned water utility, if:

(A) the municipally owned water utility has performed or contracted with another party to perform sampling and drilling tests of the land; and

(B) the sampling and drilling tests indicate the land has water resources.

SECTION 12. IC 36-7-9-25, AS AMENDED BY P.L.169-2006, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25. (a) Notice of orders, notice of continued hearings without a specified date, notice of a statement that public bids are to be let, and notice of claims for payment must be given by:

(1) sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;

(2) delivering a copy of the order or statement personally to the person to be notified; ~~or~~

(3) leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified and sending by first class mail a copy of the order or statement to the last known address of the person to be notified; **or**

(4) sending a copy of the order or statement by first class mail to the last known address of the person to be notified.

If a notice described in subdivision (1) is returned undelivered, a copy of the order or statement must be given in accordance with subdivision (2), (3), or (4).

(b) If service is not obtained by a means described in subsection (a) and the hearing authority concludes that a reasonable effort has been made to obtain service, service may be made by publishing a notice of the order or statement in accordance with IC 5-3-1 in the county where the unsafe premises are located. However, publication may be made on consecutive days. If service of an order is made by publication, the publication must include the information required by subdivisions (1), (2), (4), (5), (6), (7), and (9) of section 5(b) of this chapter, and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the enforcement authority. The hearing authority may make a determination about whether a reasonable effort has been made to obtain service by the means described in subsection (a) on the basis of information provided by the department (or, in the case of a consolidated city, the enforcement authority). The hearing authority is not required to make the determination at a hearing. The hearing authority must make the determination in writing.

(c) When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that ~~he~~ **the person** has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit must be placed on file with the enforcement authority.

(d) The date when notice of the order or statement is considered given is as follows:

(1) If the order or statement is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at the person's dwelling or usual place of abode.

(2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

(3) Notice by publication is considered given on the date of the second day that publication was made.

(e) A person with a property interest in an unsafe premises who does not:

(1) record an instrument reflecting the interest in the recorder's office of the county where the unsafe premises is located; or

(2) if an instrument reflecting the interest is not recorded, provide to the department (or, in the case of a consolidated city, the enforcement authority) in writing the person's name and address and the location of the unsafe premises;

is considered to consent to reasonable action taken under this chapter for which notice would be required and relinquish a claim to notice under this chapter.

(f) The department (or, in the case of a consolidated city, the enforcement authority) may, for the sake of administrative convenience, publish notice under subsection (b) at the same time notice is attempted under subsection (a). If published notice is given as described in subsection (b), the hearing authority shall subsequently make a determination about whether a reasonable effort has been made to obtain service by the means described in subsection (a).

SECTION 13. IC 36-7-9-29 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 29. (a) This section applies to a person if:**

(1) an order is issued to the person under this chapter requiring action related to an unsafe premises:

(A) owned by the person and leased to another person; or

(B) being purchased by the person under a contract and leased to another person;

(2) a hearing on the order was not requested under section 5(b)(6) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and

(3) either:

(A) the order is not being reviewed under section 8 of this chapter; or

(B) after review by the circuit or superior court, the court entered a judgment against the person.

(b) A person described in subsection (a) must provide to the department (or, in the case of a consolidated city, the enforcement authority) in writing the person's name, street address (excluding a post office box address), and phone number.

SECTION 14. IC 16-22-8-36 IS REPEALED [EFFECTIVE JULY 1, 2007].

(Reference is to EHB 1663 as reprinted March 30, 2007.)

Day, Chair	Miller
Buell	Breaux
House Conferees	Senate Conferees

Roll Call 481: yeas 45, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 103–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 103 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. For the purposes of this chapter:

(a) "Public agency", **except as provided in section 2.1 of this chapter,** means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts **that is required by statute, rule, or regulation.**

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

(1) any social or chance gathering not intended to avoid this chapter;

(2) any on-site inspection of any: ~~project or program;~~

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body;

(3) traveling to and attending meetings of organizations devoted to betterment of government; ~~or~~

(4) a caucus;

(5) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;

(6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action; or

(7) a gathering for the sole purpose of administering an oath of office to an individual.

(d) "Official action" means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy;

(5) make decisions; or

(6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

SECTION 2. IC 5-14-1.5-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.1. "Public agency", for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:**

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.

(B) The amount of fees received by the entity under the agreement is not based upon or does not involve a consideration of the tax revenues or receipts of the state, county, or municipality.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.

SECTION 3. IC 5-14-1.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Except as provided in section 6.1 of this chapter, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.

(b) A secret ballot vote may not be taken at a meeting.

(c) A meeting conducted in compliance with IC 5-1.5-2-2.5 does not violate this section.

(d) A member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, videoconferencing, or any other electronic means of communication:

(1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and

(2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.

(e) The memoranda of a meeting prepared under section 4 of this chapter that a member participates in by using a means of communication described in subsection (d) must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in this section; and

(3) each member who was absent.

SECTION 4. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.1. (a) Except as provided in subsection (b), the governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:**

(1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.

(2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(b) This subsection applies only to the city-county council of a consolidated city or county having a consolidated city. The city-county council violates this chapter if its members participate in a series of at least two (2) gatherings of members of the city-county council and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least five (5) members of the city-county council and the other gatherings include at least three (3) members of the city-county council.

(2) The sum of the number of different members of the city-county council attending any of the gatherings at least equals a quorum of the city-county council.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of the city-county council attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(c) A gathering under subsection (a) or (b) does not include:

(1) a social or chance gathering not intended by any member of the governing body to avoid the requirements of this chapter;

(2) an onsite inspection of any:

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body;

(3) traveling to and attending meetings of organizations devoted to the betterment of government;

(4) a caucus;

(5) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;

(6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action;

(7) a gathering for the sole purpose of administering an oath of office to an individual; or

(8) a gathering between less than a quorum of the members of the governing body intended solely for members to receive information and deliberate on whether a member or members may be inclined to support a member's proposal or a particular piece of legislation and at which no other official action will occur.

(d) A violation described in subsection (a) or (b) is subject to section 7 of this chapter.

SECTION 5. IC 5-14-1.5-6.1, AS AMENDED BY P.L.101-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or

(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.

(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.

(C) The implementation of security systems.

(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews **and negotiations** with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the Indiana finance authority, ~~or~~ **an** economic development ~~commissions,~~ **commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision.**

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or

(ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances

for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

SECTION 6. IC 5-14-1.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) An action may be filed by any person in any court of competent jurisdiction to:

(1) obtain a declaratory judgment;

(2) enjoin continuing, threatened, or future violations of this chapter; or

(3) declare void any policy, decision, or final action:

(A) taken at an executive session in violation of section 3(a) of this chapter;

(B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;

(C) that is based in whole or in part upon official action taken at any:

(i) executive session in violation of section 3(a) of this chapter; ~~or at any~~

(ii) meeting of which notice is not given in accordance with section 5 of this chapter; or

(iii) series of gatherings in violation of section 3.1 of this chapter; or

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the public access counselor concerning the violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court shall expedite the hearing of an action filed under this section.

SECTION 7. IC 5-14-3-2, AS AMENDED BY P.L.1-2006, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored

data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

(c) "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

(1) the initial development of a program, if any;

(2) the labor required to retrieve electronically stored data; and

(3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

(d) "Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

(e) "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

(1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or

(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

(f) "Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

(g) "Inspect" includes the right to do the following:

(1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

(3) In the case of public records available:

(A) by enhanced access under section 3.5 of this chapter; or

(B) to a governmental entity under section 3(c)(2) of this chapter;

to examine and copy the public records by use of an electronic device.

(4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

(h) "Investigatory record" means information compiled in the course of the investigation of a crime.

(i) "Patient" has the meaning set out in IC 16-18-2-272(d).

(j) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

(k) "Provider" has the meaning set out in ~~IC 16-18-2-295(a)~~ **IC 16-18-2-295(b)** and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

(l) "Public agency", **except as provided in section 2.1 of this chapter,** means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts **that is required by statute, rule, or regulation.**

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(m) "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

(n) "Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on

paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

(o) "Trade secret" has the meaning set forth in IC 24-2-3-2.

(p) "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation. The term includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.

SECTION 8. IC 5-14-3-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.1. "Public agency", for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:**

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.

(B) The amount of fees received by the entity under the agreement is not based upon or does not involve a consideration of the tax revenues or receipts of the state, county, or municipality.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.

SECTION 9. IC 5-14-3-4, AS AMENDED BY P.L.101-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the Indiana finance authority, ~~or~~ **an** economic development ~~commissions,~~ **commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision** with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the Indiana finance authority, ~~or~~ **an** economic development ~~commissions~~ **commission, or a governing body of a political subdivision** to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that

are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) intelligence assessments;

(G) domestic preparedness strategies;

(H) the location of community drinking water wells and surface water intakes;

(I) the emergency contact information of emergency responders and volunteers;

(J) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(K) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure,

unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 10. IC 8-1-2.2-31 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 31. (a) This section applies to a meeting of the board of commissioners of a joint agency at which at least a quorum of the board is physically present at the place where the meeting is conducted.**

(b) A member of the board of commissioners of a joint agency may participate in a meeting of the board of commissioners by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of the board of commissioners of a joint agency who participates in a meeting by using a means of communication described in subsection (b) is considered to be present at the meeting.

(d) The memoranda of a meeting of the board of commissioners of a joint agency prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

SECTION 11. IC 21-22-3-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. (a) This section applies to a meeting of the state board or a committee of the state board at which at least a quorum of the board or the committee is physically present at the place where the meeting is conducted.**

(b) A member of the state board or a committee of the state board may participate in a meeting of the state board or a committee of the state board by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting by using a means of communication described in subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

SECTION 12. IC 21-25-3-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8. (a) This section applies to a meeting of the board of trustees or a committee of the board of trustees at which at least a quorum of the board or the committee is physically present at the place where the meeting is conducted.**

(b) A member of the board or a committee of the board may participate in a meeting of the board or the committee by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting by using a means of communication described in subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

SECTION 13. IC 21-27-2-2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2. (a) This section applies to a meeting of the board of trustees or a committee of the board**

of trustees of any state educational institution (as defined in IC 21-7-13-32).

(b) A member of the board of trustees may participate in a meeting of the board:

(1) at which at least a quorum is physically present at the place where the meeting is conducted; and

(2) by using a means of communication that permits:

(A) all other members participating in the meeting; and

(B) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of a committee of the board of trustees may participate in a committee meeting by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(d) A member who participates in a meeting under subsection (b) or (c) is considered to be present at the meeting.

(e) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b) or (c); and

(3) each member who was absent.

SECTION 14. IC 25-1-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14. Meetings

Sec. 1. This section applies to a meeting of a board, committee, or commission listed in IC 25-1-5-3 or IC 25-1-6-3.

Sec. 2. A member of a board, committee, or commission may participate in a meeting of the board, committee, or commission:

(1) at which at least a quorum is physically present at the place where the meeting is conducted; and

(2) by using a means of communication that permits:

(A) all other members participating in the meeting; and

(B) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

Sec. 3. A member who participates in a meeting under section 2 of this chapter:

(1) is considered to be present at the meeting;

(2) shall be counted for purposes of establishing a quorum; and

(3) may vote at the meeting.

Sec. 4. The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in section 2 of this chapter; and

(3) each member who was absent.

(Reference is to ESB 103 as reprinted March 27, 2007.)

Gard, Chair	Stilwell
Lanane	Koch
Senate Conferees	House Conferees

Roll Call 482: yeas 43, nays 2. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 104–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 104 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 4, delete lines 7 through 37.

(Reference is to ESB 104 as printed April 3, 2007.)

Lawson, Chair	Summers
Sipes	Walorski
Senate Conferees	House Conferees

Roll Call 483: yeas 45, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 157–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 157 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert:

SECTION 1. IC 4-23-7.1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) The board, with the advice of the advisory council, shall establish operating standards and rules for libraries ~~and library services authorities~~ eligible to receive funds, either federal or state, under the provisions of any program for which the Indiana state library is the administrator. The Indiana state library shall monitor libraries ~~and library services authorities~~ eligible to receive funds or receiving funds to ascertain whether or not the standards and rules are being met.

(b) The board, with the advice of the council on library automation established under IC 4-23-7-30, shall establish library automation standards for libraries. ~~and library service authorities.~~ The Indiana state library shall monitor compliance with the standards.

SECTION 2. IC 4-23-7.1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 22. (a) The Indiana state library annually shall collect data from all libraries ~~and library services authorities~~ in Indiana.

(b) Each public officer who:

(1) has in ~~his~~ **the officer's** charge or custody;

(2) is capable of supplying; or

(3) is required to collect and compile;

information required by the library and historical department or by the state library shall supply the information promptly at the request of the department or the state library.

SECTION 3. IC 36-12-3-16, AS ADDED BY P.L.1-2005, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 16. (a) The library board may adopt a resolution allowing money to be disbursed under this section for lawful library purposes, **including advertising and promoting the programs and services of the library.**

(b) With the prior written approval of the library board and if the library board has adopted a resolution under subsection (a), claim payments may be made in advance of library board allowance for any of the following types of expenses:

(1) Property or services purchased or leased from the federal government or the federal government's agencies and the state, the state's agencies, or the state's political subdivisions.

(2) Dues, subscriptions, and publications.

(3) License or permit fees.

(4) Insurance premiums.

(5) Utility payments or connection charges.

(6) Federal grant programs where:

(A) advance funding is not prohibited; and

(B) the contracting party posts sufficient security to cover the amount advanced.

(7) Grants of state funds authorized by statute.

(8) Maintenance and service agreements.

(9) Legal retainer fees.

(10) Conference fees.

(11) Expenses related to the educational or professional development of an individual employed by the library board, including:

(A) inservice training;

(B) attending seminars or other special courses of instruction; and

(C) tuition reimbursement;

if the library board determines that the expenditures under this subdivision directly benefit the library.

(12) Leases or rental agreements.

(13) Bond or coupon payments.

(14) Payroll costs.

(15) State, federal, or county taxes.

(16) Expenses that must be paid because of emergency circumstances.

(17) Expenses incurred to advertise and promote the programs and services of the library.

~~(17)~~ **(18)** Other expenses described in a library board resolution.

Each payment of expenses lawfully incurred for library purposes must be supported by a fully itemized invoice or other documentation. The library director must certify to the library board before payment that each claim for payment is true and correct. The certification must be on a form prescribed by the state board of accounts. The library board shall review and allow the claim at the library board's first regular or special meeting following the payment of a claim under this section.

(c) Purchases of books, magazines, pamphlets, films, filmstrips, microforms, microfilms, slides, transparencies, phonodiscs, phonotapes, models, art reproductions, and all other forms of library and audiovisual materials are exempt from the restrictions imposed by IC 5-22.

(d) The purchase of library automation systems must meet the standards established by the Indiana library and historical board under IC 4-23-7.1-11(b).

SECTION 4. IC 36-12-6-3, AS ADDED BY P.L.1-2005, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. ~~(a)~~ The county contractual library board has all the powers and duties of other library boards under IC 36-12-3. ~~except the power to issue bonds under IC 36-12-3-9.~~

~~(b) The county contractual library may not lease under IC 36-12-10.~~

SECTION 5. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2007]: IC 4-23-7.1-30; IC 4-23-7.1-31.

(Reference is to ESB 157 as reprinted March 28, 2007.)

Gard, Chair	Austin
Deig	Richardson
Senate Conferees	House Conferees

Roll Call 484: yeas 45, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 171–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 171 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.1-2006, SECTION 487, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4. **(a)** The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or

partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or

reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to ~~senior~~ consumers.

(29) Engaging in dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States Armed Forces as:

(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or

(B) defined in rules adopted under subsection (b).

(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel Financial Services Protection Act (P.L.109-290), adopt rules under IC 4-22-2 to:

(1) define; and

(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States Armed Forces from;

dishonest or predatory insurance practices.

SECTION 2. IC 27-4-9-2, AS ADDED BY P.L.138-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 2. As used in this chapter, ~~"senior~~ "consumer" means an individual who ~~is at least sixty-five (65) years of age.~~ **receives a recommendation to purchase or exchange an annuity that results in the recommended purchase or exchange.**

SECTION 3. IC 27-4-9-3, AS ADDED BY P.L.138-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3. (a) An insurance producer, or an insurer in a case in which an insurance producer is not involved, shall not recommend to a ~~senior~~ consumer the:

(1) purchase of an annuity; or

(2) exchange of an annuity that results in another insurance transaction;

that is unsuitable for the ~~senior~~ consumer.

(b) A determination regarding whether a purchase or an exchange under subsection (a) is unsuitable for a ~~senior~~ consumer must be made:

(1) based on the facts disclosed by the ~~senior~~ consumer concerning the ~~senior~~ consumer's:

(A) investments and other insurance products; and

(B) financial situation and needs; and

(2) according to the rule adopted under section 4 of this chapter.

SECTION 4. IC 27-4-9-4, AS ADDED BY P.L.138-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4. **(a)** The department shall adopt ~~a rule~~ **rules** under IC 4-22-2 to ~~establish a method for making determinations as to whether a purchase or an exchange described in section 3 of this chapter is unsuitable for a senior consumer.~~ **implement this chapter.**

(b) The rules adopted under subsection (a) must set forth the duties that apply to an insurer or an insurance producer in determining whether reasonable grounds exist to believe that a recommendation to purchase or exchange an annuity is suitable for a consumer to whom the recommendation is made based on the facts disclosed by the consumer concerning the consumer's investments, other insurance products, and financial situation and needs.

(Reference is to ESB 171 as printed April 3, 2007.)

Delph, Chair	GiaQuinta
Simpson	Ripley
Senate Conferees	House Conferees

Roll Call 485: yeas 45, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 550–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 550 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-24-17-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. The application form for a driver's license and an identification card issued under IC 9-24-16 must allow an applicant to acknowledge the making of an anatomical gift under ~~IC 29-2-16.~~ **IC 29-2-16.1.**

SECTION 2. IC 9-24-17-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. The form described in section 1 of this chapter must allow the person making the gift to make an election under ~~IC 29-2-16-11.~~ **IC 29-2-16.1-4.**

SECTION 3. IC 16-19-3-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 30, 2007]: Sec. 26. (a) The

anatomical gift promotion fund is established. The fund consists of amounts distributed to the fund by the auditor of state under IC 9-18-2-16.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds are invested. Interest that accrues from these investments shall be deposited in the fund.

(c) The state department shall administer the fund. Any expenses incurred in administering the fund shall be paid from the fund.

(d) The money in the fund shall be distributed quarterly to the Indiana Donation Alliance Foundation **and Donate Life Indiana** for the purpose of implementing an organ, tissue, and marrow registry and to promote organ, tissue, and marrow donation.

(e) The Indiana Donation Alliance Foundation **and Donate Life Indiana** shall keep information regarding the identity of an individual who has indicated a desire to make an organ or tissue donation confidential.

(f) The Indiana Donation Alliance Foundation **and Donate Life Indiana** shall submit an annual report, including a list of all expenditures, to the chairperson of the:

(1) legislative council;

(2) senate health committee; and

(3) house public health committee;

before ~~January~~ **March** 15. The report must be in an electronic format under IC 5-14-6.

(g) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(h) This subsection applies if the Indiana Donation Alliance Foundation **or Donate Life Indiana**

~~(1)~~ loses its status as an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. ~~or~~

~~(2) ceases its affiliation with at least three (3) of the following organizations:~~

~~(A) American Red Cross Tissue Service.~~

~~(B) Children's Organ Transplant Association.~~

~~(C) Community Tissue Services.~~

~~(D) Indiana Lions Eye & Tissue Transplant Bank.~~

~~(E) Indiana Organ Procurement Organization.~~

~~(F) St. Joseph Hospital Tissue Bank and Indiana Cardiac Retrieval.~~

The Indiana Donation Alliance Foundation **and Donate Life Indiana** shall report in an electronic format under IC 5-14-6 to the chairpersons of the senate standing committee, as determined by the president pro tempore of the senate, and the house standing committee, as determined by the speaker of the house of representatives, that have subject matter jurisdiction over health issues. The chairpersons shall review the report and recommend to the state department whether to continue distributions under subsection (d).

(i) This section expires July 1, ~~2007.~~ **2012.**

SECTION 4. IC 16-19-3-29 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 29. The state department shall compile and make available for public inspection records of a coroner or designee denying recovery of an anatomical gift as described in IC 36-2-14-22.6(f) and IC 36-2-14-22.6(g).**

SECTION 5. IC 16-41-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. As used in this chapter, "bank" has the meaning set forth in ~~IC 29-2-16-1.~~ **IC 29-2-16.1-1.**

SECTION 6. IC 16-41-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. As used in this chapter, "hospital" has the meaning set forth in ~~IC 29-2-16-1.~~ **IC 29-2-16.1-1.**

SECTION 7. IC 16-41-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. As used in this chapter, "physician" has the meaning set forth in ~~IC 29-2-16-1.~~ **IC 29-2-16.1-1.**

SECTION 8. IC 16-41-12-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. As used in this chapter, "storage facility" has the meaning set forth in ~~IC 29-2-16-1.~~ **IC 29-2-16.1-1.**

SECTION 9. IC 16-41-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. As used in this chapter, "surgeon" has the meaning set forth in ~~IC 29-2-16-1.~~ **IC 29-2-16.1-1.**

SECTION 10. IC 21-44-1-4, AS ADDED BY SEA 526-2007, SECTION 285, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. "Cadaver" means a whole human postmortem body that:

(1) has been donated under ~~IC 29-2-16,~~ **IC 29-2-16.1;**

(2) is unclaimed by a relative or other legal representative and that would otherwise be required to be buried at public expense; or

(3) is otherwise legally procured by the Indiana University School of Medicine.

SECTION 11. IC 21-44-2-1, AS ADDED BY SEA 526-2007, SECTION 285, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The dean of the Indiana University School of Medicine or the dean's designee shall administer the anatomical education program in accordance with policies adopted by the dean or the dean's designee under section 2(1) of this chapter.

(b) In administering the anatomical education program, the dean or the dean's designee shall:

(1) administer body bequests made to eligible institutions under ~~IC 29-2-16,~~ **IC 29-2-16.1;** and

(2) maintain written records of all transactions undertaken under the anatomical education program.

(c) In administering the anatomical education program, the dean or the dean's designee may through the trustees of Indiana University:

(1) enter into contracts; and

(2) employ qualified staff either on a full-time or part-time basis, including a licensed funeral director to assist in the operation and coordination of the anatomical education program.

SECTION 12. IC 29-2-16.1 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 16.1. Revised Uniform Anatomical Gift Act

Sec. 1. The following definitions apply throughout this chapter:

(1) "Adult" means an individual at least eighteen (18) years of age.
(2) "Agent" means an individual who is:
(A) authorized to make health care decisions on behalf of another person by a health care power of attorney; or
(B) expressly authorized to make an anatomical gift on behalf of another person by a document signed by the person.
(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.
(4) "Bank" or "storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts of human bodies.
(5) "Decedent":
(A) means a deceased individual whose body or body part is or may be the source of an anatomical gift; and
(B) includes:
(i) a stillborn infant; and
(ii) except as restricted by any other law, a fetus.
(6) "Disinterested witness" means an individual other than a spouse, child, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift or another adult who exhibited special care and concern for the individual. This term does not include a person to whom an anatomical gift could pass under section 10 of this chapter.
(7) "Document of gift" means a donor card or other record used to make an anatomical gift, including a statement or symbol on a driver's license, identification, or donor registry.
(8) "Donor" means an individual whose body or body part is the subject of an anatomical gift.
(9) "Donor registry" means:
(A) a data base maintained by:
(i) the bureau of motor vehicles under IC 9-24-17-9; or
(ii) the equivalent agency in another state;
(B) the Donate Life Indiana Registry maintained by the Indiana Donation Alliance Foundation; or
(C) a donor registry maintained in another state;
that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
(10) "Driver's license" means a license or permit issued by the bureau of motor vehicles to operate a vehicle.
(11) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.
(12) "Guardian" means an individual appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.
(13) "Hospital" means a facility licensed as a hospital under the laws of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.
(14) "Identification card" means an identification card issued by the bureau of motor vehicles.
(15) "Minor" means an individual under eighteen (18) years of age.
(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.
(17) "Parent" means an individual whose parental rights have not been terminated.
(18) "Part" means an organ, an eye, or tissue of a human being. The term does not mean a whole body.
(19) "Pathologist" means a physician:
(A) certified by the American Board of Pathology; or
(B) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American Board of Pathology.
(20) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.
(21) "Physician" or "surgeon" means an individual authorized to practice medicine or osteopathy under the laws of any state.
(22) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.
(23) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made an appropriate refusal.
(24) "Reasonably available" means:
(A) able to be contacted by a procurement organization without undue effort; and
(B) willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.
(25) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.
(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(27) "Refusal" means a record created under section 6 of this chapter that expressly states the intent to bar another person from making an anatomical gift of an individual's body or part.
(28) "Sign" means, with the present intent to authenticate or adopt a record:
(A) to execute or adopt a tangible symbol; or
(B) to attach to or logically associate with the record an electronic symbol, sound, or process.
(29) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession

subject to the jurisdiction of the United States.

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an eye enucleator.

(31) "Tissue" means a part of the human body other than an organ or an eye. The term does not include blood or other bodily fluids unless the blood or bodily fluids are donated for the purpose of research or education.

(32) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(33) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of organ transplant patients.

Sec. 2. This chapter applies to:

(1) an anatomical gift;

(2) an amendment to an anatomical gift;

(3) a revocation of an anatomical gift; or

(4) a refusal to make an anatomical gift.

Sec. 3. Subject to section 7 of this chapter, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 4 of this chapter by:

(1) the donor, if the donor is an adult or if the donor is a minor and is:

(A) emancipated; or

(B) authorized under state law to apply for a driver's license because the donor is at least sixteen (16) years of age;

(2) an agent of the donor, unless the health care power of attorney or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is not emancipated; or

(4) the donor's guardian.

Sec. 4. (a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication directed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or

(4) as provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under section 3 of this chapter may make a gift by:

(1) a donor card or other record signed by the donor or other person making the gift; or

(2) authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry.

(c) If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in subdivision (1).

(d) Revocation, suspension, expiration, or cancellation of:

(1) a driver's license; or

(2) an identification card;

that indicates an anatomical gift does not invalidate the gift.

(e) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Sec. 5. (a) Subject to section 7 of this chapter, a donor or other person authorized to make an anatomical gift under section 3 of this chapter may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to subsection (b), another individual acting at the direction of the donor or the other person authorized to make an anatomical gift if the donor or other person is physically unable to sign; or

(2) a later executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed under subsection (a)(1)(C) must:

(1) be witnessed by two (2) adults, at least one (1) of whom is a disinterested witness, who are witnesses at the request of the donor or the other person authorized to make an anatomical gift; and

(2) state that the record has been signed and witnessed as described in subdivision (1).

(c) Subject to section 7 of this chapter, a donor or other person authorized to make an anatomical gift under section 3 of this chapter may revoke an anatomical gift by the destruction or cancellation of the:

(1) document of gift; or

(2) portion of the document of gift used to make the gift;

with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift as described in subsection (a).

Sec. 6. (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, including if the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury to at least two (2) adults, and one (1) of the adults must be a disinterested witness.

(b) A record signed under subsection (a)(1)(B) must:

(1) be witnessed by two (2) adults, at least one (1) of whom is a disinterested witness, who are witnesses at the request of the donor or the other person acting at the direction of the donor; and

(2) state that the record has been signed and witnessed as described in subdivision (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner described in subsection (a);

(2) by subsequently making an anatomical gift under section 4 of this chapter that is inconsistent with the refusal; or

(3) by destroying or cancelling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as provided in section 7(h) of this chapter, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars another person from making an anatomical gift of the individual's body or part.

Sec. 7. (a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 4 of this chapter or an amendment to an anatomical gift of the donor's body or part under section 5 of this chapter.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 5 of this chapter is not a refusal and does not bar the person specified in section 3 or section 8 from making an anatomical gift of the donor's body or part under section 4 or 9 of this chapter.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 4 of this chapter or an amendment to an anatomical gift of the donor's body or part under section 5 of this chapter, another person may not make, amend, or revoke the gift of the donor's body or part under section 9 of this chapter.

(d) A revocation of an anatomical gift of a donor's body or part under section 5 of this chapter by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 4 or 9 of this chapter.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 3 of this chapter, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 3 of this chapter, an anatomical gift of a part for one (1) or more of the purposes set forth in section 3 of this chapter is not a limitation on the making of an anatomical gift of the part for any of the other purposes of the donor or any other person under section 4 or 9 of this chapter.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Sec. 8. (a) Subject to subsections (b) and (c), unless barred by section 6 or 7 of this chapter, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who are reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under section 3(2) of this chapter immediately before the decedent's death.

(2) The spouse of the decedent.

(3) Adult children of the decedent.

(4) Parents of the decedent.

(5) Adult siblings of the decedent.

(6) Adult grandchildren of the decedent.

(7) Grandparents of the decedent.

(8) An adult who exhibited special care and concern for the decedent.

(9) A person acting as the guardian of the decedent at the time of death.

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one (1) member of a class listed in subsection (a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to whom the gift may pass under section 10 of this chapter knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

Sec. 9. (a) A person authorized to make an anatomical gift under section 8 of this chapter may make an anatomical gift by a document or may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under section 8 of this chapter may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under section 8 of this chapter may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Sec. 10. (a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital.

(2) An accredited medical school, dental school, college, or university.

(3) An organ procurement organization.

(4) An appropriate person for research or education.

(5) Subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part.

(6) An eye bank.

(7) A tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(5) cannot be transplanted into the individual, the part passes in accordance with subsection (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of:

(A) transplantation;

(B) therapy;

(C) education; or

(D) research;

the gift passes to the appropriate eye bank that has an agreement to recover donated eyes from patients who die within the hospital. The eye bank is considered to be the custodian of the donated eye.

(2) If the part is tissue and the gift is for the purpose of:

(A) transplantation; or

(B) therapy;

the gift passes to the appropriate tissue bank that has an agreement to recover donated tissue from patients that die within the hospital. The tissue bank is considered to be the custodian of the donated tissue.

(3) If the part is an organ and the gift is for the purpose of:

(A) transplantation; or

(B) therapy;

the gift passes to the appropriate organ procurement organization that has an agreement to recover donated organs from patients who die within the hospital. The procurement organization is considered to be the custodian of the donated organs.

(4) If the part is an organ, an eye, or tissue from a patient who dies within a hospital and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization that has an agreement to recover donated organs, tissue, or eyes from patients who die within the hospital.

(d) For the purpose of subsection (c), if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation, research, or therapy, and the gift passes in accordance with subsection (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation, research, or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e), and (f), the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation, therapy, or research, other than an anatomical gift under subsection (a)(2), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the:

(1) gift was not effectively made under section 4 or 9 of this chapter; or

(2) decedent made a refusal under section 6 of this chapter that was not revoked.

(k) For purposes of subsection (j), if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(l) If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On

request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

(m) If the will, card, or other document, or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement;

(2) an oral statement made in the presence of two (2) persons and communicated to the donee;

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(4) a signed card or document found on the decedent's person or in the decedent's effects.

(n) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (m) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(o) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (m).

(p) Except as otherwise provided in subsection (a)(2), this chapter does not affect the allocation of organs for transplantation or therapy.

Sec. 11. (a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death in a hospital for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) An organ procurement organization.

(2) A tissue bank.

(3) An eye bank.

(4) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to civil liability for failing to discharge the duties imposed by this section but may be subject to criminal liability or administrative sanctions.

Sec. 12. (a) The individual's attending physician, or, if none, the:

(1) physician that certifies the individual's death;

(2) hospital where the individual is admitted;

(3) hospital where the individual's remains are being kept; or

(4) individual identified in section 8(a) of this chapter;

may petition a court with probate jurisdiction in the county where the remains of the individual who is the subject of the petition are located, or the county in which the individual died, for the information referred to in subsection (b).

(b) A person identified in subsection (a) may petition the court with probate jurisdiction specified in subsection (a) to determine whether the individual:

(1) made a written anatomical gift under section 4 of this chapter or IC 9-24-17; or

(2) made a written revocation of an anatomical gift under section 5 of this chapter or under IC 9-24-17.

(c) If the court with probate jurisdiction determines under subsection (b) that the individual made a written anatomical gift that was not subsequently revoked in writing by the individual, the court shall order that the anatomical gift of an organ, tissue, or an eye be recovered.

(d) The court with probate jurisdiction may modify or waive notice and a hearing if the court determines that a delay would have a serious adverse effect on:

(1) the medical viability of the individual; or

(2) the viability of the individual's anatomical gift of an organ, tissue, or an eye.

Sec. 13. (a) As used in this section:

(1) "Administrator" means a hospital administrator or a hospital administrator's designee.

(2) "Gift" means a gift of all or any part of the human body made under this chapter.

(3) "Representative" means a person who is:

(1) authorized under section 8 of this chapter to make a gift on behalf of a decedent; and

(2) available at the time of the decedent's death when members of a prior class under section 8 of this chapter are unavailable.

(b) An administrator of each hospital or the administrator's designee may ask each patient who is at least eighteen (18) years of age if the patient is an organ or a tissue donor or if the patient desires to become an organ or a tissue donor.

(c) The governing board of each hospital shall adopt procedures to determine under what circumstances an administrator or an administrator's designee may ask a patient if the patient is an organ or a tissue donor or if the patient desires to become an organ or a tissue donor.

(d) The administrator shall inform the representative of the procedures available under this chapter for making a gift whenever:

(1) an individual dies in a hospital;

(2) the hospital has not been notified that a gift has been authorized under section 4 of this chapter; and

(3) a procurement organization determines that the individual's body may be suitable of yielding a gift.

(e) If:

(1) an individual makes an anatomical gift on the individual's driver's license or identification card under IC 9-24-17; and

(2) the individual dies in a hospital;

the person in possession of the individual's driver's license or identification card shall immediately produce the driver's license or identification card for examination upon request, as provided in section 10(l) of this chapter.

(f) A gift made in response to information provided under this section must be signed by the donor or made by the donor's telegraphic, recorded telephonic, or other recorded message.

(g) When a representative is informed under this section about the procedures available for making a gift, the fact that the representative was so informed must be noted in the

decedent's medical record.

(h) A person who fails to discharge the duties imposed by this section is not subject to civil liability but may be subject to criminal liability or administrative sanctions.

Sec. 14. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 10 of this chapter.

Sec. 15. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of:

(1) the bureau of motor vehicles;

(2) the equivalent agency to the bureau of motor vehicles in another state;

(3) the Indiana donor registry; and

(4) any other registry that the organization knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the bureau of motor vehicles to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to whom a part passes under section 10 of this chapter may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in section 8 of this chapter having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to section 10(i) of this chapter, IC 36-2-14-21, and IC 36-2-14-22.6, the rights of the person to whom a part passes under section 10 of this chapter are superior to the rights of all others with respect to the part, including a part from a person whose death within a hospital is under investigation by a coroner. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person who accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 10 of this chapter, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Sec. 16. Each hospital in Indiana shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Sec. 17. (a) A person who acts in accordance with this chapter is not liable for the act in a civil action or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in section 8(a)(2), 8(a)(3), 8(a)(4), 8(a)(5), 8(a)(6), 8(a)(7), or 8(a)(8) of this chapter relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

(d) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17.

(e) A hospital or a recovery agency is immune from civil liability for determining in good faith and in compliance with this section that:

(1) an individual made a written anatomical gift; or

(2) an individual subsequently made a written revocation of an anatomical gift.

(f) A person who, in good faith reliance upon a will, card, or other document of gift, and without actual notice of the amendment, revocation, or invalidity of the will, card, or document:

(1) takes possession of a decedent's body or performs or causes to be performed surgical operations upon a decedent's body; or

(2) removes or causes to be removed organs, tissues, or other parts from a decedent's body;

is not liable in damages in any civil action brought against the donor for that act.

Sec. 18. (a) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this chapter, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Sec. 19. (a) The bureau of motor vehicles shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(b) A donor registry must:

(1) allow a donor or other person authorized under section 4 of this chapter to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(2) be accessible to a procurement organization and to coroners to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(3) be accessible for purposes of subdivisions (1) and (2) seven (7) days a week on a twenty-four (24) hour basis.

(c) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(d) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (b) and (c).

Sec. 20. (a) As used in this section:

(1) "Advance health care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health care decision" means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive, unless the directive expressly states the contrary, hospitals must use measures necessary to allow a procurement agency to determine the medical suitability of an organ for transplantation or therapy by insuring that life support is not withdrawn from the prospective donor before consultation with the appropriate procurement agency to determine medical potential for donation. The procurement organization shall make every effort to determine donor potential within approximately two (2) hours from the time the procurement organization is contacted by the hospital. A hospital may, in accordance with a donor's declaration or advance health care directive, withdraw life support from the prospective donor if the procurement organization has not made a determination of donor potential within six (6) hours from the time the procurement organization is contacted by the hospital.

Sec. 21. (a) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, education, or training.

(b) If a coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner and a postmortem examination is going to be performed, unless the coroner denies recovery in accordance with IC 36-2-14-22.6(f), the coroner or designee shall, when practicable, conduct a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift. If a coroner conducts a postmortem examination outside of a compatible period, the coroner must document why examination occurred outside of a compatible period. It is considered sufficient documentation if the coroner documents that additional time was necessary to conduct an adequate medicolegal examination.

(c) A part may not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or pathologist from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or from using the body or parts of a decedent under the jurisdiction of the coroner for the purposes of research, education, or training required by the coroner or pathologist.

SECTION 13. IC 34-30-2-123.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 123.5. ~~IC 29-2-16-2.5 (Concerning health care provider immunity and anatomical gifts).~~ **IC 29-2-16.1-17(a) (Concerning a person acting under anatomical gift laws).**

SECTION 14. IC 34-30-2-123.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 123.7. ~~IC 29-2-16-3.5 (Concerning hospital and recovery agency immunity and anatomical gifts).~~ **IC 29-2-16.1-17(b) (Concerning a person or an estate in connection with the making of an anatomical**

gift).

SECTION 15. IC 34-30-2-124 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 124. ~~IC 29-2-16.4 (Concerning a person for taking a decedent's body or removing organs, tissues, or other parts in reliance on a will, card, or other document of gift).~~ **IC 29-2-16.1-17(d) (Concerning health care provider immunity and anatomical gifts).**

SECTION 16. IC 34-30-2-125 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 125. ~~IC 29-2-16-7 (Concerning a person acting under anatomical gift laws).~~ **IC 29-2-16.1-17(e) (Concerning hospital and recovery agency immunity and anatomical gifts).**

SECTION 17. IC 34-30-2-125.3, AS ADDED BY P.L.53-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 125.3. ~~IC 29-2-16-17 (Concerning a person or an estate in connection with the making of an anatomical gift).~~ **IC 29-2-16.1-17(f) (Concerning a person for taking a decedent's body or removing organs, tissues, or other parts in reliance on a will, card, or other document of gift).**

SECTION 18. IC 35-46-5-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. An individual who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document that:**

(1) expresses;

(2) makes an amendment or revocation of; or

(3) refuses;

a gift of organs, tissues, eyes, or other body parts intended to be used in research or in transplants, commits a Class A misdemeanor.

SECTION 19. IC 36-2-14-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) As used in this section, "cornea" includes corneal tissue.

(b) As used in this section, "decedent" means a person described in section 6(a)(1) through 6(a)(5) of this chapter.

(c) As used in this section, "eye bank" means a nonprofit corporation:

(1) organized under Indiana law;

(2) exempt from federal income taxation under Section 501 of the Internal Revenue Code; and

(3) whose purposes include obtaining, storing, and distributing corneas that are to be used for corneal transplants or for other medical or medical research purposes.

(d) If under section 6(d) of this chapter the coroner requires an autopsy to be performed upon a decedent, the coroner may authorize the removal of one (1) or both of the decedent's corneas for donation to an eye bank for transplantation, if the following conditions exist:

(1) The decedent's corneas are not necessary for successful completion of the autopsy.

(2) The decedent's corneas are not necessary for use as evidence.

(3) Removal of the decedent's corneas will not alter the postmortem facial appearance of the decedent.

(4) A representative of the eye bank, authorized by the trustees of the eye bank to make requests for corneas, has done the following:

(A) Within six (6) hours after the time of death, made a reasonable attempt to:

(i) contact any of the persons listed in the order of priority specified in ~~IC 29-2-16-2(b),~~ **IC 29-2-16.1-8;** and

(ii) inform the person of the effect of the removal of the decedent's corneas on the physical appearance of the decedent.

(B) Submitted to the coroner:

(i) a written request for the donation by the coroner of corneas of the decedent subject to autopsy under section 6(d) of this chapter; and

(ii) a written certification that corneas donated under this section are intended to be used only for cornea transplant.

(5) The removal of the corneas and their donation to the eye bank will not alter a gift made by:

(A) the decedent when alive; or

(B) any of the persons listed in the order of priority specified in ~~IC 29-2-16-2(b),~~ **IC 29-2-16.1-8;**

to an agency or organization other than the eye bank making the request for the donation.

(6) The coroner, at the time the removal and donation of a decedent's corneas is authorized, does not know of any objection to the removal and donation of the decedent's corneas made by:

(A) the decedent, as evidenced in a written document executed by the decedent when alive; or

(B) any of the persons listed in the order of priority specified in ~~IC 29-2-16-2(b),~~ **IC 29-2-16.1-8.**

(e) A person, including a coroner and an eye bank and the eye bank's representatives, who exercises reasonable care in complying with subsection (d)(6) is immune from civil liability arising from cornea removal and donation allowed under this section.

(f) A person who authorizes the donation of a decedent's corneas may not be charged for the costs related to the donation. The recipient of the donation is responsible for the costs related to the donation.

SECTION 20. IC 36-2-14-22.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 22.6. (a) Upon request of a procurement organization, a coroner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the coroner only if relevant to transplantation or therapy.**

(b) The coroner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner which the coroner determines may be relevant to the investigation.

(c) A person that has any information requested by a coroner under subsection (b) shall provide that information as expeditiously as possible to allow the coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(d) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner and a postmortem examination is not required, or the coroner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(e) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner has been or might be made, but the coroner, in consultation with a pathologist, initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death or interfere with the preservation or collection of evidence, the coroner and pathologist shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner may allow the recovery, delay the recovery, or deny the recovery.

(f) Before the removal procedure, the coroner or designee may allow recovery by the procurement organization to proceed, or, if the coroner or designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death or, in tissue procurement cases, if the coroner or designee determines that, for evidentiary purposes, the body must remain undisturbed prior to autopsy, deny recovery by the procurement organization. The coroner or designee must be present at the scene before denying the recovery of a part. When practicable, the coroner and pathologist shall work with the procurement organization to facilitate removal of a part following any postmortem examination of the decedent.

(g) If the coroner or designee denies recovery under subsection (e) or (f), the coroner or designee shall:

(1) explain in a record the specific reasons for not allowing recovery of the part;

(2) include the specific reasons in the records of the coroner and forensic pathologist; and

(3) provide a record with the specific reasons to the procurement organization and the state department of health.

(h) If the coroner or designee allows recovery of a part under subsection (d), (e), or (f), the procurement organization shall do the following:

(1) At the request of the coroner or designee and when practicable, perform diagnostic studies that would aid in documenting the presence or absence of injuries.

(2) Cause the physician or technician who removes the part to explain in a signed record the condition of the part, including the presence or absence of any injuries to the part or any surrounding tissue or organs.

(3) Provide a copy of the record described in subdivision (2) to the coroner and the investigating law enforcement agency.

(4) Cause the physician or technician who removes the part to photograph, collect, preserve, and maintain the appropriate chain of custody of any evidence that is found during procurement.

(5) Cause the physician or technician who removes the part to collect blood and other bodily fluid samples as directed by the coroner or designee.

(6) Cause the physician or technician who removes the part to, upon the request of the coroner or designee, photograph, biopsy, or provide any other information and observations concerning the part or body that would assist in the postmortem examination.

(i) If a coroner or designee must:

(1) be present at a removal procedure under subsection (f); or

(2) perform duties at times other than those that are usual and customary for the coroner or designee to maximize tissue or eye recovery under IC 29-2-16.1-21(b);

at the request of the coroner or designee, the procurement organization that requested the recovery of the part shall reimburse the coroner or designee for the additional costs incurred by the coroner or designee to comply with subsection (f) or IC 29-2-16.1-21(b).

SECTION 21. IC 29-2-16 IS REPEALED [EFFECTIVE JULY 1, 2007]

(Reference is to ESB 550 as reprinted March 20, 2007.)

Becker, Chair	Welch
Sipes	Crouch
Senate Conferees	House Conferees

Roll Call 486: yeas 44, nays 1. Report adopted.

SENATE MOTION

Madam President: I move that Senators Arnold and Lanane be added as coauthors of Engrossed Senate Bill 520.

M. YOUNG

Motion prevailed.

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed Senate Bills 104–1, 157–1, 192–1, 220–1, 232–1, and 329–1.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed Senate Bill 345.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed Senate Concurrent Resolutions 105 and 107 and the same are herewith returned to the Senate.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed House Concurrent Resolution 85 and the same is herewith transmitted for further action.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Senate amendments to Engrossed House Bill 1546 and is eligible for enrollment.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed House Bills 1067–1, 1457–1, and 1663–1.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed Senate Bill 504.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1075.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Senate amendments to Engrossed House Bill 1647 and is eligible for enrollment.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE PRESIDENT PRO TEMPORE OF THE INDIANA STATE SENATE

Madam President and Members of the Senate: I have on April 26, 2007, signed Senate Enrolled Acts: 43, 346, 347, and 472.

DAVID C. LONG
President Pro Tempore

MESSAGE FROM THE PRESIDENT PRO TEMPORE OF THE INDIANA STATE SENATE

Madam President and Members of the Senate: I have on April 26, 2007, signed Senate Enrolled Act 106.

DAVID C. LONG
President Pro Tempore

REPORT OF THE PRESIDENT PRO TEMPORE

Madam President: I hereby report that, pursuant to Senate Rules 73, 79, and 81, I have received from Senator Riegsecker permission for the designated second author/sponsor to take all necessary action for bills or resolutions on which Senator Riegsecker is the first author/sponsor.

LONG

Report adopted.

MESSAGE FROM THE PRESIDENT OF THE SENATE

Members of the Senate: I have on the 26th day of April, 2007, signed Senate Enrolled Act 490.

REBECCA S. SKILLMAN
Lieutenant Governor

3:19 p.m.

The Chair declared a recess until the fall of the gavel.

Recess

The Senate reconvened at 6:40 p.m., with the President of the Senate in the Chair.

Senators Errington, Meeks, and Simpson, who had been excused, were present.

MESSAGE FROM THE GOVERNOR

Madam President and Members of the Senate: On April 27, 2007, I signed the following enrolled act into law: SEA 254.

MITCHELL E. DANIELS, JR.
Governor

PRESIDENT PRO TEMPORE'S REPORT OF ASSIGNMENT OF CONFEREES

Pursuant to Rule 81(b), of the Standing Rules and Orders of the

Senate, President Pro Tempore David C. Long has appointed the following senators to serve as Senate conferees (or advisors) on Engrossed House Bill 1774:
Conferees: Becker and Deig
Advisors: Wyss and Errington

LONG
Date: 4/27/2007
Time: 4:22 p.m.

Report adopted.

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed Senate Bill 506.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has passed House Concurrent Resolution 88 and the same is herewith transmitted for further action.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1027.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed House Bills 1058–1, 1452–1, 1722–1, and 1731–1.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed Senate Bills 103–1, 171–1, 328–1, and 550–1.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the Speaker of the House has appointed the following Representatives to a conference committee to confer with a like committee of the Senate on Engrossed House Bill 1774:

Conferees:
Van Haaften, Chair
Borror
Advisors:
GiaQuinta and McClain

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed House Bills 1266–1, 1437–1, and 1821–1.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed Senate Bill 419.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1301.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1019.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Conference Committee Reports on Engrossed Senate Bills 44–1, 113–1, 191–1, 416–1, 480–1, 502–1, and 561–1.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the House has adopted the Senate amendments to Engrossed House Bill 1753 and is eligible for enrollment.

CLINTON MCKAY
Principal Clerk of the House

MESSAGE FROM THE HOUSE

Madam President: I am directed by the House to inform the Senate that the Speaker of the House has removed Representative T. Harris as a conferee on Engrossed House Bill 1503 and now appoints Representative Summers thereon.

CLINTON MCKAY
Principal Clerk of the House

COMMITTEE REPORT

Madam President: Pursuant to Senate Rule 83(j), your Committee on Rules and Legislative Procedure to which was referred Conference Committee Reports filed on Engrossed Senate Bills 113, 330, 44, 128, 450, 191, 502, 561, 480, 416, 520, 9, and 320 and Engrossed House Bills 1731, 1722, 1437, 1821, and 1266 has had the same under consideration and begs leave to report back to the Senate with the recommendation that said Conference Committee Reports are eligible for consideration.

LONG, Chair

Report adopted.

MOTIONS TO CONCUR IN HOUSE AMENDMENTS

SENATE MOTION

Madam President: I move that the Senate do concur with the House amendments to Engrossed Senate Bill 134.

MILLER

Roll Call 487: yeas 38, nays 11. Motion prevailed.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT

EHB 1731–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill 1731 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Page 5, after line 31, begin a new paragraph and insert:

"SECTION 9. IC 36-8-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. This chapter applies to a county ~~having.~~ **that has:**

(1) a consolidated city; ~~or~~

(2) a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000); **or**

(3) adopted an ordinance providing for the county to be governed by this chapter.

However, sections 9.5, 15, 16, 17, and 18 of this chapter apply only to a county having a consolidated city.

SECTION 10. IC 36-8-15-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) This subsection applies to a county ~~not having a consolidated city.~~ **that has a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000).** For the purpose of raising money to fund the operation of the district, the county fiscal body may impose, for property taxes first due and payable during each year after the adoption of an ordinance establishing the district, an ad valorem property tax levy on property within the district. The property tax rate for that levy may not exceed five cents ($0.05) on each one hundred dollars ($100) of assessed valuation.

(b) This subsection applies to a county having a consolidated city. The county fiscal body may elect to fund the operation of the district from part of the certified distribution, if any, that the county is to receive during a particular calendar year under IC 6-3.5-6-17. To make such an election, the county fiscal body must adopt an ordinance before September 1 of the immediately preceding calendar year. The county fiscal body must specify in the ordinance the amount of the certified distribution that is to be used to fund the operation of the district. If the county fiscal body adopts such an ordinance, it shall immediately send a copy of the ordinance to the county auditor.

(c) Subject to subsections (d), (e), and (f), if an ordinance or resolution is adopted changing the territory covered by the district or the number of public agencies served by the district, the local government tax control board shall, for property taxes first due and payable during the year after the adoption of the ordinance, adjust the maximum permissible ad valorem property tax levy limits of the district and the units participating in the district.

(d) If a unit by ordinance or resolution joins the district or elects to have its public safety agencies served by the district, the local government tax control board shall reduce the maximum permissible ad valorem property tax levy of the unit for property taxes first due and payable during the year after the adoption of the ordinance or resolution. The reduction shall be based on the amount budgeted by the unit for public safety communication services in the year in which the ordinance was adopted. If such an ordinance or resolution is adopted, the district shall refer its proposed budget, ad valorem property tax levy, and property tax rate for the following year to the board, which shall review and set the budget, levy, and rate as though the district were covered by IC 6-1.1-18.5-7.

(e) If a unit by ordinance or resolution withdraws from the district or rescinds its election to have its public safety agencies served by the district, the local government tax control board shall reduce the maximum permissible ad valorem property tax levy of the district for property taxes first due and payable during the year after the adoption of the ordinance or resolution. The reduction shall be based on the amounts being levied by the district within that unit. If such an ordinance or resolution is adopted, the unit shall refer its proposed budget, ad valorem property tax levy, and property tax rate for public safety communication services to the board, which shall review and set the budget, levy, and rate as though the unit were covered by IC 6-1.1-18.5-7.

(f) The adjustments provided for in subsections (c), (d), and (e) do not apply to a district or unit located in a particular county if the county fiscal body of that county does not impose an ad valorem property tax levy under subsection (a) to fund the operation of the district.

(g) A county that has adopted an ordinance under section 1(3) of this chapter may not impose an ad valorem property tax levy on property within the district to fund the operation or implementation of the district.".

(Reference is to EHB 1731 as reprinted March 21, 2007.)

GiaQuinta, Chair	Lawson
Wolkins	Lanane
House Conferees	Senate Conferees

Roll Call 488: yeas 49, nays 1. Report adopted.

CONFERENCE COMMITTEE REPORT
ESB 44–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 44 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 16-41-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in IC 16-41-10-2.5 and subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to HIV without the **oral or written** consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented. The test for the antibody or antigen to HIV may not be performed on a woman under section 5 or 6 of this chapter if the woman refuses under section 7 of this chapter to consent to the test.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 2. IC 31-37-19-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be:

(1) ~~a sex crime listed in IC 35-38-1-7.1(c)~~ **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3)** and the ~~crime~~ **offense** created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8),~~ or

(2) an offense ~~related~~ **relating** to controlled substances ~~listed in IC 35-38-1-7.1(f)~~ **(as defined in IC 35-41-1-19.4)** if the offense involved:

(A) the delivery by a person to another person; or

(B) the use by a person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(b) The juvenile court shall, in addition to any other order or decree the court makes under this chapter, order the child to undergo a screening test for the human immunodeficiency virus (HIV).

(c) If the screening test indicates the presence of antibodies to HIV, the court shall order the child to undergo a confirmatory test.

(d) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health.

(e) The state department of health shall do the following:

(1) Notify **potentially affected** victims of the ~~crimes listed in IC 35-38-1-7.1(c) and IC 35-38-1-7.1(f)~~ **offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3) or offense relating to controlled substances (as defined in IC 35-41-1-19.4)** of the HIV screening results.

(2) Provide counseling regarding HIV and a referral for appropriate health care to the victims.

SECTION 3. IC 31-37-19-17.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.4. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be ~~a sex crime listed in IC 35-38-1-7.1(c).~~ **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3).**

(b) The juvenile court may, in addition to any other order or decree the court makes under this chapter, order:

(1) the child; and

(2) the child's parent or guardian;

to receive psychological counseling as directed by the court.

SECTION 4. IC 35-38-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.5. A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

(1) convicted of ~~a sex crime listed in section 7.1(c) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime~~ **offense** created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in section 7.1(b)(8) of this chapter;~~ or

(2) convicted of an offense relating to controlled substances ~~listed in section 7.1(f) of this chapter~~ and the offense involved: ~~the conditions described in section 7.1(b)(9)(A) of this chapter.~~

(A) the delivery by any person to another person; or

(B) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

SECTION 5. IC 35-38-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of ~~a sex crime listed in section 7.1(c) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime~~ **offense** created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in section 7.1(b)(8) of this chapter;~~ or

(B) convicted of an offense ~~related~~ **relating** to controlled substances ~~listed in section 7.1(f) of this chapter~~ and the offense involved: ~~the conditions described in section 7.1(b)(9)(A) of this chapter.~~

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 6. IC 35-38-1-10.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.6. (a) The state department of health shall notify victims of ~~the crimes listed in section 7.1(c) and 7.1(f) of this chapter~~ **an offense relating to a criminal sexual act or an offense relating to controlled substances** if tests conducted under section 10.5 or ~~section~~ 10.7 of this chapter confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 7. IC 35-38-1-10.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.7. (a) Upon:

(1) written request made to a prosecuting attorney by an alleged victim of ~~a sex offense listed in section 7.1(c) of this chapter;~~ **an offense relating to a criminal sexual act;** and

(2) after a hearing held under this section, a court entering a finding that there is probable cause to believe the alleged victim is a victim of ~~a sex offense listed in section 7.1(c) of this chapter~~ **an offense relating to a criminal sexual act** that was committed by the defendant;

the court may order an individual named as defendant in the prosecution of the offense to undergo a screening test for human immunodeficiency virus (HIV).

(b) Before issuing an order for testing under subsection (a), the court shall conduct a hearing at which both the alleged victim and the defendant have the right to be present. Both the alleged victim and the defendant must be notified of:

(1) the date, time, and location of the hearing; and

(2) their right to be present at the hearing.

(c) During the hearing, only affidavits, counteraffidavits, and medical records that relate to the material facts of the case used to support or rebut a finding of probable cause to believe the alleged victim was exposed to human immunodeficiency virus (HIV) as a result of the alleged ~~sex~~ offense **relating to a criminal sexual act** may be admissible.

(d) The written request of the alleged victim made under subsection (a) must be filed by the prosecuting attorney with the court and sealed by a court.

(e) The requirements of section 10.5 of this chapter apply to testing ordered by a court under this section.

(f) If the defendant has not been convicted, the results of a test conducted under this section shall be kept confidential. The results may not be made available to any person or public or private agency other than the following:

(1) The defendant and the defendant's counsel.

(2) The prosecuting attorney.

(3) The department of correction.

(4) The victim and the victim's counsel.

(g) A victim may disclose the results of a test to an individual or organization to protect the health and safety of or to seek compensation for:

(1) the victim;

(2) the victim's sexual partner; or

(3) the victim's family.

(h) A person that knowingly or intentionally:

(1) receives notification or disclosure of the results of a test under this section; and

(2) discloses the results of the test in violation of this section;

commits a Class B misdemeanor.

SECTION 8. IC 35-38-2-2.3, AS AMENDED BY P.L.60-2006, SECTION 9, AND AS AMENDED BY P.L.140-2006, SECTION 24, AND P.L.173-2006, SECTION 24, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON

PASSAGE]: Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment.

(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

(4) Support the person's dependents and meet other family responsibilities.

(5) Make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.

(6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.

(7) Pay a fine authorized by IC 35-50.

(8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.

(9) Report to a probation officer at reasonable times as directed by the court or the probation officer.

(10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.

(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.

(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of ~~a sex crime listed in IC 35-38-1-7.1(c)~~ **an offense relating to a criminal sexual act** and the ~~crime~~ **offense** created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8);~~ or

(B) the person had been convicted of an offense ~~related~~ **relating** to a controlled substance ~~listed in IC 35-38-1-7.1(f)~~ and the offense involved: ~~the conditions described in IC 35-38-1-7.1(b)(9)(A).~~

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) Participate in a reentry court program.

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another

jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(17):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) As a condition of probation, a court shall require a person:

(1) convicted of an offense described in IC 10-13-6-10;

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a condition of probation.

SECTION 9. IC 35-41-1-19.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19.3. "Offense relating to a criminal sexual act" means the following:**

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

(7) Incest (IC 35-46-1-3).

(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

SECTION 10. IC 35-41-1-19.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19.4. "Offense relating to controlled substances" means the following:**

(1) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(2) Dealing in methamphetamine (IC 35-48-4-1.1).

(3) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(4) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(5) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(6) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(7) Possession of methamphetamine (IC 35-48-4-6.1).

(8) Possession of a controlled substance (IC 35-48-4-7).

(9) Possession of paraphernalia (IC 35-48-4-8.3).

(10) Dealing in paraphernalia (IC 35-48-4-8.5).

(11) Offenses relating to registration (IC 35-48-4-14).

SECTION 11. **An emergency is declared for this act.**

(Reference is to ESB 44 as reprinted April 11, 2007.)

Bray, Chair	Lawson
Lanane	Foley
Senate Conferees	House Conferees

Roll Call 489: yeas 50, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 113–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 113 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 36-10-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) A ~~municipal~~ **city** board consists of four (4) members to be appointed by the **city** executive. ~~of the municipality.~~ The members shall be appointed on the basis of their interest in and knowledge of parks and recreation, but no more than two (2) members may be affiliated with the same political party. ~~Members of a town board must be residents of the district.~~ In addition, the creating ordinance may provide for one (1) or two (2) ex officio members, those being:

(1) a member

~~(A)~~ of the governing body of the school corporation selected by that body; ~~or~~

~~(B) designated by the governing body of the school corporation if the board is in a town;~~

(2) a member of the governing body of the library district selected by that body; or

(3) both **subdivisions** (1) and (2).

(b) A town board consists of four (4) members to be appointed by the town legislative body. The members shall be appointed on the basis of their interest in and knowledge of parks and recreation. Except as provided in section 4.1 of this chapter, not more than two (2) members may be affiliated with the same political party. Members of the board must be residents of the district. In addition, the creating ordinance may provide for one (1) or two (2) ex officio members, those being:

(1) a member:

(A) of the governing body of the school corporation selected by that body; or

(B) designated by the governing body of the school corporation;

(2) a member of the governing body of the library district selected by that body; or

(3) both subdivisions (1) and (2).

~~(b)~~ **(c)** A county board shall be appointed as follows:

(1) Two (2) members shall be appointed by the judge of the circuit court.

(2) One (1) member shall be appointed by the county executive.

(3) Two (2) members shall be appointed by the county fiscal body.

The members appointed under subdivisions (1), (2), and (3) shall be appointed on the basis of their interest in and knowledge of parks and recreation, but no more than one (1) member appointed under subdivisions (1) and (3) may be affiliated with the same political party. In a county having at least one (1) first or second class city, the creating ordinance must provide for one (1) ex officio board member to be appointed by the executive of that city. The member appointed by the city executive must be affiliated with a different political party than the member appointed by the county executive.

However, if a county has more than one (1) such city, the executives of those cities shall agree on the member. The member serves for a term coterminous with the term of the appointing executive or executives.

~~(c)~~ **(d)** Ex officio members have all the rights of regular members, including the right to vote. A vacancy in an ex officio position shall be filled by the appointing authority.

~~(d)~~ **(e)** Neither a municipal executive nor a member of a county fiscal body, county executive, or municipal fiscal body may serve on a board.

~~(e)~~ **(f)** The creating ordinance in any county may provide for:

(1) the county cooperative extension coordinator;

(2) the county extension educator; or

(3) a member of the county extension committee selected by the committee;

to serve as an ex officio member of the county board, in addition to the members provided for under subsection ~~(b).~~ **(c).**

~~(f)~~ **(g)** The creating ordinance in a county having no first or second class cities may provide for a member of the county board to be selected by the board of supervisors of a soil and water conservation district in which a facility of the county board is located. The member selected under this subsection is in addition to the members provided for under subsections ~~(b)~~ **(c)** and ~~(c).~~ **(f).**

SECTION 2. IC 36-10-3-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4.1. A town legislative body may, by a majority vote, waive any or all of the following requirements of a town board member under section 4(b) of this chapter:**

(1) The requirement that a member of the town board be affiliated with a political party.

(2) The requirement that not more than two (2) of the four (4) members of the town board be affiliated with the same political party.

A town legislative body may vote for a waiver only if the waiver is necessary due to the absence of persons who are willing to serve on the town board and who satisfy any or all of the requirements.

(Reference is to ESB 113 as printed March 27, 2007.)

Gard, Chair	Reske
Hume	Cherry
Senate Conferees	House Conferees

Roll Call 490: yeas 50, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 128–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 128 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-10-5.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. **(a)** Upon election to become a participant by any officer who is a member of the public employees' retirement fund, the board shall transfer all creditable service standing to the credit of the electing officer under the public employees' retirement fund to the credit of the electing officer under the retirement plan created by this chapter.

(b) Creditable service under this chapter, including credit for military service, shall accrue and be computed and credited to participants in the same manner and in the same amount as creditable service accrues, is computed and credited under the public employees' retirement law.

(c) In addition to creditable service computed under subsection (b), a participant is entitled to receive creditable service under this chapter for the time the participant receives disability benefits under a disability plan established under IC 5-10-8-7.

SECTION 2. IC 5-10-5.5-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7.5. (a) As used in this section, "board" refers to the board of trustees of the public employees' retirement fund established by IC 5-10.3-3-1.**

(b) As used in this section, "public retirement fund" refers collectively to:

(1) the public employees' retirement fund (IC 5-10.3);

(2) the Indiana state teachers' retirement fund (IC 5-10.4);

(3) the state police pension trust (IC 10-12); and

(4) the 1977 police officers' and firefighters' pension and disability fund (IC 36-8-8).

(c) Subject to this section, a participant may purchase service credit for the participant's prior service in a position covered by a public retirement fund.

(d) To purchase the service credit described in subsection (c), a participant must meet the following requirements:

(1) The participant has at least one (1) year of creditable service in the retirement plan created by this chapter.

(2) The participant has not attained vested status in and is not an active participant in the public retirement fund from which the participant is purchasing the service credit.

(3) Before the participant retires, the participant makes contributions to the retirement plan created by this chapter as follows:

(A) Contributions that are equal to the product of the following:

(i) The participant's salary at the time the participant actually makes a contribution for the service credit.

(ii) A rate, determined by the actuary for the retirement plan created by this chapter, based on the age of the participant at the time the participant actually makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased.

(iii) The number of years of service credit the participant intends to purchase.

(B) Contributions for any accrued interest, at a rate determined by the actuary for the retirement plan created by this chapter, for the period from the participant's initial participation in the retirement plan created by this chapter to the date payment is made by the participant.

(e) At the request of the participant purchasing service credit under this section, the amount a participant is required to contribute under subsection (d)(3) may be reduced by a trustee to trustee transfer from a public retirement fund in which the participant has an account that contains amounts attributable to member contributions (plus any credited earnings) to the retirement plan created by this chapter. The participant may direct the transfer of an amount only to the extent necessary to fund the service purchase under subsection (d)(3). The participant shall complete any forms required by the public retirement fund from which the participant is requesting a transfer or the retirement plan created by this chapter before the transfer is made.

(f) At least ten (10) years of service in the retirement plan created by this chapter is required before a participant may receive a benefit based on service credit purchased under this section.

(g) A participant who:

(1) terminates employment before satisfying the eligibility requirements necessary to receive an annual retirement allowance; or

(2) receives an annual retirement allowance for the same service from another tax supported governmental retirement plan other than under the federal Social Security Act;

may withdraw the purchase amount plus accumulated interest after submitting a properly completed application for a refund to the retirement plan created by this chapter.

(h) The following may apply to the purchase of service credit under this section:

(1) The board may allow a participant to make periodic payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments must be made.

(2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.

(3) A participant may not claim the service credit for purposes of determining eligibility for a benefit or computing benefits unless the participant has made all payments required for the purchase of the service credit.

(i) To the extent permitted by the Internal Revenue Code and applicable regulations, the retirement plan created by this chapter may accept, on behalf of a participant who is purchasing permissive service credit under this chapter, a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(j) To the extent permitted by the Internal Revenue Code and applicable regulations, the retirement plan created by this chapter may accept, on behalf of a participant who is purchasing permissive service credit under this chapter, a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

SECTION 3. IC 5-10-5.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) **Except as provided in subsection (c),** every participant shall contribute ~~three~~ **four** percent ~~(3%)~~ **(4%)** of the ~~first eight thousand five hundred dollars ($8,500)~~ ~~of his~~ **participant's** annual salary to the participants' savings fund.

(b) Contributions shall be made in the form of payroll deductions from each and every payment of salary received by the participant. Every participant shall, as a condition precedent to ~~his~~ becoming a participant, consent to the payroll deductions.

(c) An employer may pay all or a part of the contributions for the participant. All contributions made by an employer under this subsection shall be treated as pick-up contributions under Section 414(h)(2) of the Internal Revenue Code.

SECTION 4. IC 5-10-5.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) Benefits provided under this section are subject to section 2.5 of this chapter.

(b) The annual retirement allowance of a participant, payable in equal monthly installments beginning on ~~his~~ **the participant's** normal retirement date, shall be a percentage of ~~his~~ **the participant's** average annual salary, such percentage to be twenty-five percent (25%) increased by one and two-thirds percent (1 2/3%) of ~~his~~ **the participant's** average annual salary for each completed year of creditable service more than ten (10) years. ~~and one percent (1%) of his average annual salary for each completed year of creditable service more than twenty-five (25) years.~~

(c) The annual retirement allowance shall cease with the last monthly payment prior to the death of the participant.

SECTION 5. IC 5-10-5.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) Any participant who has attained the age of forty-five (45) years and has accrued at least fifteen (15) years of creditable service may retire and become eligible for benefits as provided in section 12(a) of this chapter.

(b) If:

(1) a participant is at least fifty-five (55) years of age; and

(2) the sum of the participant's years of creditable service and age in years equals at least eighty-five (85);

the participant may retire and become eligible for benefits as provided in section 12(b) of this chapter.

(c) A participant who:

(1) is at least fifty (50) years of age; and

(2) has accrued at least twenty-five (25) years of creditable service;

may retire and become eligible for benefits under section 12(b) of this chapter.

SECTION 6. IC 5-10-5.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) The amount of annual retirement allowance payable in equal monthly installments to a participant who retires under section 11(a) of this chapter (relating to early retirement) shall be determined in accordance with section 10(a) of this chapter (relating to normal retirement). However, the amount of annual retirement allowance otherwise payable upon early retirement shall be reduced by one-quarter percent (1/4%) for each full month that the date of early retirement precedes the attainment of the participant's sixtieth birthday.

(b) The amount of annual retirement allowance payable in equal monthly installments to a participant who retires under section 11(b) **or 11(c)** of this chapter (relating to early retirement) shall be determined in accordance with section 10(a) of this chapter (relating to normal retirement).

SECTION 7. IC 5-10-5.5-13.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13.5. (a) This section applies to participants whose disability occurred after June 30, 1987.

(b) Benefits provided under this section are subject to section 2.5 of this chapter.

(c) As used in this section, a disability is to be considered to have arisen in the line of duty if the disability is the direct result of:

(1) a personal injury that occurs while the participant is on duty; or

(2) a personal injury that occurs while the participant is off duty and responding to an offense or an emergency or a reported offense or emergency;

or if the disability is presumed incurred in the line of duty under IC 5-10-13.

(d) A participant whose disability arose in the line of duty is entitled to a monthly benefit equal to the participant's monthly salary on the date of disability multiplied by the degree of impairment (expressed as a percentage impairment of the person as a whole). However, the monthly benefit under this subsection must be at least:

(1) twenty percent (20%) of the participant's monthly salary on the date of the disability if the participant has more than five (5) years of service; or

(2) ten percent (10%) of the participant's monthly salary on the date of the disability if the participant has five (5) or fewer years of service.

(e) A participant whose disability did not arise in the line of duty is entitled to a monthly benefit equal to one-half (1/2) of the participant's monthly salary on the date of disability multiplied by the degree of impairment (expressed as a percentage of the person as a whole). However, the monthly benefit under this subsection must be at least:

(1) ten percent (10%) of the participant's monthly salary on the date of the disability if the participant has more than five (5) years of service; or

(2) five percent (5%) of the participant's monthly salary on the date of the disability if the participant has five (5) or fewer years of service.

(f) A participant who is receiving a disability benefit under subsection (d) is entitled:

(1) to receive a disability benefit for the remainder of the participant's life; and

(2) to have the participant's benefit recomputed under section 10 of this chapter (relating to normal retirement) when the participant becomes sixty (60) years of age.

SECTION 8. IC 33-38-7-18, AS AMENDED BY HEA 1480-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) This section applies to a person who:

(1) is a judge participating under this chapter;

(2) was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate either:

(A) before becoming a judge; or

(B) after leaving an elected term on the bench;

(3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and

(4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant in the judges' 1977 benefit system under section 1 of this chapter, credit for prior or subsequent service by the judge as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

(1) the ~~prior~~ service was credited under the public employees' retirement fund;

(2) the state contributes to the judges' 1977 benefit system the amount the board determines necessary to amortize the ~~prior~~ service liability over a period determined by the board, but not more than ten (10) years; and

(3) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1977 benefit system during the ~~prior~~ service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service ~~after the date of participation~~ **earned as a judge** in the 1977 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

(1) A minimum benefit applies to participants receiving credit in the judges' 1977 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age and equals the actuarial equivalent of the vested retirement benefit that is:

(A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) based solely on:

(i) creditable service;

(ii) the average of the annual compensation; and

(iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1977 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for ~~prior~~ service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the ~~prior~~ service under the judges' 1977 benefit system may be granted only under subsection (b).

(5) Credit ~~for prior service~~ in the public employees' retirement fund for service other than as a full-time referee, full-time commissioner, or full-time magistrate remains under the public employees' retirement fund and may not be credited under the judges' 1977 benefit system.

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

SECTION 9. IC 36-8-8-7.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7.2. (a) This section applies to an individual:**

(1) who becomes a member of the 1977 fund under section 7(h) of this chapter;

(2) whose appointment as a fire chief or police chief ends after June 30, 2007; and

(3) who is not eligible to receive a benefit from the 1977 fund at the end of the individual's appointment as a fire chief or police chief.

(b) A fund member described in subsection (a) may elect:

(1) to receive the fund member's contributions to the 1977 fund under section 8 of this chapter; or

(2) to transfer the fund member's service credit earned as a fire chief or police chief to PERF under subsection (c).

(c) If a fund member makes the election described in subsection (b)(2), the PERF board shall:

(1) grant to the fund member service credit in PERF for all service earned as a fire chief or police chief in the 1977 fund; and

(2) transfer from the 1977 fund to PERF:

(A) the fund member's contributions made during the fund member's appointment as a fire chief or police chief to the 1977 fund; plus

(B) the present value of the unreduced benefit that would be payable to the transferring fund member upon retirement under section 10 of this chapter.

(d) The PERF board shall deposit the amounts transferred to PERF under subsection (c) as follows:

(1) The fund member's contributions to the 1977 fund shall be credited to the fund member's PERF annuity savings account.

(2) The present value of the unreduced benefit that would be payable to the transferring fund member upon retirement under section 10 of this chapter shall be credited to PERF's retirement allowance account.

(e) For a fund member who makes the election described in subsection (b)(2), all credit for service as a fire chief or police chief in the 1977 fund is waived.

SECTION 10. IC 36-8-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) Each fund member shall contribute during the period of ~~his~~ **the fund member's** employment or for thirty-two (32) years, whichever is shorter, an amount equal to six percent (6%) of the salary of a first class patrolman or firefighter. However, the employer may pay all or a part of the contribution for the member. The amount of the contribution, other than contributions paid on behalf of a member, shall be deducted each pay period from each fund member's salary by the disbursing officer of the employer. The employer shall send to the PERF board each year on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, a certified list of fund members and a warrant issued by the employer for the total amount deducted for fund members' contributions.

(b) **Except as provided in section 7.2 of this chapter,** if a fund member ends ~~his~~ **the fund member's** employment other than by death or disability before ~~he~~ **the fund member** completes twenty (20) years of active service, the PERF board shall return to ~~him~~ **the fund member** in a lump sum ~~his~~ **the fund member's** contributions plus interest as determined by the PERF board. If the fund member returns to service, ~~he~~ **the fund member** is entitled to credit for the years of service for which ~~his~~ **the fund member's** contributions were refunded if ~~he~~ **the fund member** repays the amount refunded to ~~him~~ **the fund member** in either a lump sum or a series of payments determined by the PERF board.

SECTION 11. IC 36-8-10-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. **Except as provided in section 19 of this chapter,** a sheriff may participate in the pension trust in the same manner as a county police officer. In addition, a sheriff who is not participating in the pension trust after the creation of the pension trust in ~~his~~ **the sheriff's** county may make a payment to the pension trust in the amount of contributions ~~he~~ **the sheriff** would have made had ~~he~~ **the sheriff** been participating while a sheriff, plus interest at three percent (3%) compounded annually. The sheriff is entitled to credit for the years of service as a sheriff for all purposes of the pension trust if ~~he~~ **the sheriff** makes this payment.

SECTION 12. IC 36-8-10-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. **(a) Except as provided in subsection (c),** a person entitled to ~~a~~ **an** interest in or share of a pension or benefit from the trust funds may not, before the actual payment, anticipate it or sell, assign, pledge, mortgage, or otherwise dispose of or encumber it. In addition, the interest, share, pension, or benefit is not, before the actual payment, liable for the debts or liabilities of the person entitled to it, nor is it subject to attachment, garnishment, execution, levy, or sale on judicial proceedings, or transferable, voluntarily or involuntarily.

(b) The trustee may expend the sums from the fund that it considers proper for necessary expenses.

(c) This subsection does not apply to the sheriff of a county. Notwithstanding any other provision of this chapter, an employee beneficiary who is receiving a normal or disability monthly pension benefit under this chapter may, after June 30, 2007, authorize the trustee to pay a portion of the employee beneficiary's monthly pension benefit to an insurance provider for the purpose of paying a premium on a policy of insurance for accident, health, or long term care coverage for:

(1) the employee beneficiary;

(2) the employee beneficiary's spouse; or

(3) the employee beneficiary's dependents (as defined in Section 152 of the Internal Revenue Code).

SECTION 13. P.L.29-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: SECTION 4. (a) As used in this SECTION, "PERF board" refers to the public employees' retirement fund board of trustees established by IC 5-10.3-3-1.

(b) As used in this SECTION, "fund" refers to the fund for the defined contribution plan of the legislators' retirement system established by IC 2-3.5-3-2.

(c) Beginning January 1, 2004, the PERF board shall conduct a pilot program concerning:

(1) the implementation of a member's investment selection; and

(2) the crediting of a member's contributions and earnings;

for the fund.

(d) The pilot program referred to in subsection (c) must include the following elements:

(1) Notwithstanding IC 2-3.5-5-3(b)(2), the PERF board shall implement a member's selection under IC 2-3.5-5-3 not later than the next business day following receipt of the member's selection by the PERF board. This date is the effective date of the member's selection.

(2) Notwithstanding IC 2-3.5-5-3(b)(7), all contributions to a member's account in the fund must be allocated under IC 2-3.5-5-3 not later than the last day of the quarter in which the contributions are received and reconciled in accordance with the member's most recent effective direction.

(3) Notwithstanding IC 2-3.5-5-3(c) and IC 2-3.5-5-3(d), when a member retires, becomes disabled, dies, or withdraws from the fund, the amount credited to the member is the market value of the member's investment as of five (5) business days preceding the member's distribution or annuitization at retirement, disability, death, or withdrawal, plus contributions received after that date.

(4) Notwithstanding IC 2-3.5-5-4, contributions to the fund under IC 2-3.5-5-4 must be credited to the fund not later than the last day of the quarter in which the contributions were deducted.

(5) Notwithstanding IC 2-3.5-5-5 **(before its repeal on January 1, 2009) or IC 2-3.5-5-5.5,** the state shall make contributions under IC 2-3.5-5-5 **(before its repeal on January 1, 2009) or IC 2-3.5-5-5.5** to the fund not later than the last day of each quarter. ~~The~~ Contributions **made by the state before January 1, 2009,** must equal twenty percent (20%) of the annual salary received by each participant during that quarter. **After December 31, 2008, the amount of the state's contributions is determined under IC 2-3.5-5-5.5.**

(e) Before November 1 ~~2006,~~ **of each year,** the PERF board shall report to the pension management oversight commission established by IC 2-5-12 the results of the pilot program referred to in subsection (c) and shall recommend proposed legislation if the report includes a finding that the pilot program should be implemented on a permanent basis. If the PERF board recommends implementing the pilot program on a permanent basis, the PERF board shall provide to the pension management oversight commission a schedule to implement the elements of the pilot program on a permanent basis for all funds for which it has responsibility.

(f) This SECTION expires July 1, ~~2007.~~ **2010.**

SECTION 14. [EFFECTIVE JULY 1, 2007] **IC 5-10-5.5-7.5, as added by this act, and IC 5-10-5.5-8, as amended by this act, apply after June 30, 2007, to active participants in the state excise police, gaming agent, and conservation enforcement officers' retirement plan established by IC 5-10-5.5-2.**

SECTION 15. [EFFECTIVE JULY 1, 2007] **IC 5-10-5.5-10, IC 5-10-5.5-11, and IC 5-10-5.5-12, all as amended by this act, apply to participants of the state excise police, gaming agent, and conservation enforcement officers' retirement plan established by IC 5-10-5.5-2 who retire after June 30, 2007.**

SECTION 16. [EFFECTIVE JULY 1, 2007] **IC 5-10-5.5-7 and IC 5-10-5.5-13.5, both as amended by this act, apply to participants of the state excise police, gaming agent, and conservation enforcement officers' retirement plan established by IC 5-10-5.5-2 who become disabled after June 30, 2007.**

(Reference is to ESB 128 as reprinted March 21, 2007.)

M. Young, Chair	Tyler
Deig	Buell
Senate Conferees	House Conferees

Roll Call 491: yeas 50, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 191–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 191 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-23-6.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The board shall adopt rules under IC 4-22-2 for the following:

(1) Standards for continuing education and training for county coroners, **including education and training requirements set forth in IC 36-2-14.**

(2) Mandatory training and continuing education requirements for deputy coroners, **including education and training requirements set forth in IC 36-2-14.**

(3) Minimum requirements for continuing education instructors approved by the board.

(4) The necessary administration of this chapter.

SECTION 2. IC 4-23-6.5-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10. The board shall consult with the Indiana law enforcement academy under IC 36-2-14-22.2 concerning criminal investigations in the creation of:**

(1) the training course for coroners and deputy coroners under IC 36-2-14-22.2(a); and

(2) the annual training course for coroners and deputy coroners under IC 36-2-14-22.2(b).

SECTION 5. IC 36-2-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Whenever the coroner is notified that a person in the county:

(1) has died from violence;

(2) has died by casualty;

(3) has died when apparently in good health;

(4) has died in an apparently suspicious, unusual, or unnatural manner; or

(5) has been found dead;

~~he~~ **the coroner** shall, before the scene of the death is disturbed, notify a law enforcement agency having jurisdiction in that area. The agency shall assist the coroner in conducting an investigation of how the person died and a medical investigation of the cause of death.

(b) The coroner shall file with the person in charge of interment a coroner's certificate of death within seventy-two (72) hours after being notified of the death. If the cause of death is not established with reasonable certainty within seventy-two (72) hours, the coroner shall file with the person in charge of interment a coroner's certificate of death, with the cause of death designated as "deferred pending further action". As soon as ~~he~~ **the coroner** determines the cause of death, the coroner shall file a supplemental report indicating ~~his~~ **the** exact findings with the local health officer having jurisdiction, who shall make it part of ~~his~~ **the health officer's** official records.

(c) If this section applies, the body and the scene of death may not be disturbed until:

(1) the coroner has photographed them in the manner that most fully discloses how the person died; **and**

(2) law enforcement and the coroner have finished their initial assessment of the scene of death.

However, a coroner or law enforcement officer may order a body to be moved before photographs are taken if the position or location of the body unduly interferes with activities carried on where the body is found, but the body may not be moved from the immediate area and must be moved without substantially destroying or altering the evidence present.

(d) When acting under this section, if the coroner considers it necessary to have an autopsy performed, is required to perform an autopsy under subsection (f), or is requested by the prosecuting attorney of the county to perform an autopsy, the coroner shall employ a physician:

(1) certified by the American Board of Pathology; or

(2) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American Board of Pathology;

to perform the autopsy. The physician performing the autopsy shall be paid a fee of at least fifty dollars ($50) from the county treasury. A coroner may employ the services of the medical examiner system, provided for in IC 4-23-6-6, when an autopsy is required, as long as this subsection is met.

(e) If:

(1) at the request of:

(A) the decedent's spouse;

(B) a child of the decedent, if the decedent does not have a spouse;

(C) a parent of the decedent, if the decedent does not have a spouse or children;

(D) a brother or sister of the decedent, if the decedent does not have a spouse, children, or parents; or

(E) a grandparent of the decedent, if the decedent does not have a spouse, children, parents, brothers, or sisters;

(2) in any death where two (2) or more witnesses who corroborate the circumstances surrounding death are present; and

(3) two (2) physicians who are licensed to practice medicine in the state and who have made separate examinations of the decedent certify the same cause of death in an affidavit within twenty-four (24) hours after death;

an autopsy need not be performed. The affidavits shall be filed with the circuit court clerk.

(f) A county coroner may not certify the cause of death in the case of the sudden and unexpected death of a child who is at least one (1) week old and not more than three (3) years old unless an autopsy is performed at county expense. However, a coroner may certify the cause of death of a child described in this subsection without the performance of an autopsy if subsection (e) applies to the death of the child.

SECTION 6. IC 36-2-14-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2007]: **Sec. 6.5. (a) As used in this section, "DNA analysis" means an identification process in which the unique genetic code of an individual that is carried by the individual's deoxyribonucleic acid (DNA) is compared to genetic codes carried in DNA found in bodily substance samples obtained by a law enforcement agency in the exercise of the law enforcement agency's investigative function.**

(b) As used in this section, "immediate family member" means, with respect to a particular dead person, an individual who is at least eighteen (18) years of age and who is one (1) of the following:

(1) The dead person's spouse.

(2) The dead person's child.

(3) The dead person's parent.

(4) The dead person's grandparent.

(5) The dead person's sibling.

(c) The coroner shall make a positive identification of a dead person unless extraordinary circumstances described in subsection (d) exist. In making a positive identification, the coroner shall determine the identity of a dead person by one (1) of the following methods:

(1) Fingerprint identification.

(2) DNA analysis.

(3) Dental record analysis.

(4) Positive identification by at least one (1) of the dead person's immediate family members if the dead person's body is in a physical condition that would allow for the dead person to be reasonably recognized.

(d) For the purposes of subsection (c), extraordinary circumstances exist if, after a thorough investigation, the coroner determines that identification of the dead person is not possible under any of the four (4) methods described in subsection (c).

SECTION 7. IC 36-2-14-18, AS AMENDED BY P.L.141-2006, SECTION 113, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) Notwithstanding IC 5-14-3-4(b)(1), when a coroner investigates a death, the office of the coroner is required to make available for public inspection and copying the following:

(1) The name, age, address, sex, and race of the deceased.

(2) The address where the dead body was found, or if there is no address the location where the dead body was found and, if different, the address where the death occurred, or if there is no address the location where the death occurred.

(3) The name of the agency to which the death was reported and the name of the person reporting the death.

(4) The name of any public official or governmental employee present at the scene of the death and the name of the person certifying or pronouncing the death.

(5) Information regarding an autopsy (requested or performed) limited to the date, the person who performed the autopsy, where the autopsy was performed, and a conclusion as to:

(A) the probable cause of death;

(B) the probable manner of death; and

(C) the probable mechanism of death.

(6) The location to which the body was removed, the person determining the location to which the body was removed, and the authority under which the decision to remove the body was made.

(7) The records required to be filed by a coroner under section 6 of this chapter and the verdict and the written report required under section 10 of this chapter.

(b) A county coroner or a coroner's deputy who receives an investigatory record from a law enforcement agency shall treat the investigatory record with the same confidentiality as the law enforcement agency would treat the investigatory record.

(c) Notwithstanding any other provision of this section, a coroner shall make available a full copy of an autopsy report, other than a photograph, video recording, or audio recording of the autopsy, upon the written request of the next of kin of the decedent or of an insurance company investigating a claim arising from the death of the individual upon whom the autopsy was performed. The insurance company is prohibited from publicly disclosing any information contained in the report beyond that information that may otherwise be disclosed by a coroner under this section. This prohibition does not apply to information disclosed in communications in conjunction with the investigation, settlement, or payment of the claim.

(d) Notwithstanding any other provision of this section, a coroner shall make available a full copy of an autopsy report, other than a photograph, video recording, or audio recording of the autopsy, upon the written request of:

(1) the director of the division of disability and rehabilitative services established by IC 12-9-1-1;

(2) the director of the division of mental health and addiction established by IC 12-21-1-1; or

(3) the director of the division of aging established by IC 12-9.1-1-1;

in connection with a division's review of the circumstances surrounding the death of an individual who received services from a division or through a division at the time of the individual's death.

(e) Notwithstanding any other provision of this section, a coroner shall make available, upon written request, a full copy of an autopsy report, including a photograph, a video recording, or an audio recording of the autopsy, to:

(1) the department of child services established by IC 31-25-1-1, including an office of the department located in the county where the death occurred;

(2) the statewide child fatality review committee established by IC 31-33-25-6; or

(3) a county child fatality review team or regional child fatality review team established under IC 31-33-24-6 by the county or for the county where the death occurred;

for purposes of the entities described in subdivisions (1) through (3) conducting a review or an investigation of the circumstances surrounding the death of a child (as defined in IC 31-9-2-13(d)(1)) and making a determination whether the death of the child was a result of abuse, abandonment, or neglect.

(f) Except as provided in subsection (g), the information required to be available under subsection (a) must be completed not later than fourteen (14) days after the completion of:

(1) the autopsy report; or

(2) if applicable, any other report, including a toxicology report, requested by the coroner as part of the coroner's

investigation; whichever is completed last.

(g) The prosecuting attorney may petition a circuit or superior court for an order prohibiting the coroner from publicly disclosing the information required in subsection (a). The prosecuting attorney shall serve a copy of the petition on the coroner.

(h) Upon receipt of a copy of the petition described in subsection (g), the coroner shall keep the information confidential until the court rules on the petition.

(i) The court shall grant a petition filed under subsection (g) if the prosecuting attorney proves by a preponderance of the evidence that public access or dissemination of the information specified in subsection (a) would create a significant risk of harm to the criminal investigation of the death. The court shall state in the order the reasons for granting or denying the petition. An order issued under this subsection must use the least restrictive means and duration possible when restricting access to the information. Information to which access is restricted under this subsection is confidential.

(j) Any person may petition the court to modify or terminate an order issued under subsection (i). The petition for modification or termination must allege facts demonstrating that:

(1) the public interest will be served by allowing access; and

(2) access to the information specified in subsection (a) would not create a significant risk to the criminal investigation of the death.

The person petitioning the court for modification or termination shall serve a copy of the petition on the prosecuting attorney and the coroner.

(k) Upon receipt of a petition for modification or termination filed under subsection (j), the court may:

(1) summarily grant, modify, or dismiss the petition; or

(2) set the matter for hearing.

If the court sets the matter for hearing, upon the motion of any party or upon the court's own motion, the court may close the hearing to the public.

(l) If the person filing the petition for modification or termination proves by a preponderance of the evidence that:

(1) the public interest will be served by allowing access; and

(2) access to the information specified in subsection (a) would not create a significant risk to the criminal investigation of the death;

the court shall modify or terminate its order restricting access to the information. In ruling on a request under this subsection, the court shall state the court's reasons for granting or denying the request.

SECTION 8. IC 36-2-14-22.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 22.2. (a) The coroners training board established by IC 4-23-6.5-3, in consultation with the Indiana law enforcement academy, shall create and offer a training course for coroners and deputy coroners. The training course must include:**

(1) at least forty (40) hours of instruction; and

(2) instruction regarding:

(A) death investigation;

(B) crime scenes; and

(C) preservation of evidence at a crime scene for police and crime lab technicians.

(b) The coroners training board, in consultation with the Indiana law enforcement academy shall create and offer an annual training course for coroners and deputy coroners. The annual training course must:

(1) include at least eight (8) hours of instruction; and

(2) cover recent developments in:

(A) death investigation;

(B) crime scenes; and

(C) preservation of evidence at a crime scene for police and crime lab technicians.

(c) In creating the courses under subsections (a) and (b), the coroners training board shall consult with a pathologist certified by the American Board of Pathology regarding medical issues that are a part of the training courses.

(d) All training in the courses offered under subsections (a) and (b) that involves medical issues must be approved by a pathologist certified by the American Board of Pathology.

(e) All training in the courses offered under subsections (a) and (b) that involves crime scenes and evidence preservation must be approved by a law enforcement officer.

(f) The coroners training board shall issue a coroner or deputy coroner a certificate upon successful completion of the courses described in subsections (a) and (b).

SECTION 9. IC 36-2-14-23 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 23. (a) Each coroner shall successfully complete the training course offered under section 22.2(a) of this chapter within six (6) months after taking office.**

(b) Each deputy coroner shall successfully complete the training course offered under section 22.2(a) of this chapter within one (1) year after beginning employment with a coroner's office.

(c) Each coroner and each deputy coroner shall successfully complete the annual training course offered under section 22.2(b) of this chapter each year after the year in which the coroner or deputy coroner received the training required by section 22.2(a) of this chapter.

(d) After a coroner or deputy coroner has:

(1) successfully completed the training course as required under subsection (a) or (b); and

(2) successfully completed the annual training course as required under subsection (c);

the coroner or deputy coroner shall present a certificate or other evidence to the county executive, or in the case of a county that contains a consolidated city, the city-county council, that the coroner or deputy coroner has successfully completed the training required under subsection (a), (b), or (c).

(e) If a coroner or deputy coroner does not present a certificate or other evidence to the county executive, or in the case of a county that contains a consolidated city, the city-county council, that the coroner or deputy coroner has successfully completed the training required under subsection (a), (b), or (c), the county executive or city-county council shall order the auditor to withhold the paycheck of the coroner or

deputy coroner until the coroner or deputy coroner satisfies the respective training requirements under subsections (a), (b), and (c), unless the county executive or city-county council adopts a resolution finding that:

(1) the failure of the coroner or deputy coroner to complete the respective training requirements under subsections (a), (b), and (c) is the result of unusual circumstances;

(2) the coroner or deputy coroner is making reasonable progress, under the circumstances, toward completing the respective training requirements under subsections (a), (b), and (c); and

(3) in light of the unusual circumstances described in subdivision (1), withholding the paycheck of the coroner or deputy coroner would be unjust.

(f) If the county executive or city-county council orders an auditor to withhold a paycheck under subsection (e) and a coroner or deputy coroner later presents a certificate or other evidence to the county executive or city-county council that the coroner or deputy coroner has successfully completed training required under subsection (a), (b), or (c), the county executive or city-county council shall order the auditor to release all of the coroner's or deputy coroner's paychecks that were withheld from the coroner or deputy coroner.

SECTION 10. IC 36-2-14-24 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 24. (a) Except as provided in subsection (b), if a coroner does not release a written report required under section 10 of this chapter or a full copy of an autopsy report required under section 18 of this chapter as required by law, the county executive, or in the case of a county containing a consolidated city, the city-county council, shall order the auditor to withhold the paycheck of the coroner until the coroner properly releases the written report or full autopsy report, unless the county executive or city-county council adopts a resolution finding that:**

(1) the failure of the coroner or deputy coroner to release the written report or full autopsy report is the result of unusual circumstances;

(2) the coroner or deputy coroner is making reasonable progress, under the circumstances, toward completing and releasing the written report or full autopsy report; and

(3) in light of the unusual circumstances described in subdivision (1), withholding the paycheck of the coroner or deputy coroner would be unjust.

(b) A county auditor may not withhold the paycheck of a coroner if a coroner is legally prohibited from releasing a written report or from releasing a full autopsy report. However, a coroner is required to release a written report or full autopsy report as soon as possible after the legal prohibition on releasing the written report or full autopsy report ceases to exist.

(c) If the county executive or city-county council orders an auditor to withhold a paycheck under subsection (a) and a coroner properly releases the written report or full autopsy report, the county executive or city-county council shall order the auditor to release all of the coroner's paychecks that were withheld from the coroner.

(Reference is to ESB 191 as reprinted April 6, 2007.)

Miller, Chair	Tincher
Sipes	Buell
Senate Conferees	House Conferees

Roll Call 492: yeas 50, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 450–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 450 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-23-18-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) By May 15 of each year, each methadone provider shall submit to the division a fee of:

(1) ~~twenty dollars ($20)~~ **thirty dollars ($30) for each Indiana resident patient; and**

(2) one hundred fifty dollars ($150) for each nonresident patient;

treated by the methadone provider during the preceding ~~calender~~ **calendar** year.

(b) The fee collected under subsection (a) shall be deposited in the methadone diversion control and oversight program fund established under section 4 of this chapter.

SECTION 2. IC 12-23-18-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) As used in this section, "fund" means the methadone diversion control and oversight program fund established under subsection (b).

(b) The methadone diversion control and oversight program fund is established to administer and carry out the purposes of this chapter. The fund shall be administered by the division. **Money in the fund may also be used for the following:**

(1) To support technical assistance to health providers who provide assistance concerning the following:

(A) Methadone and other medication assisted therapy.

(B) Evidence based addiction treatment.

(C) Interventions and treatment of individuals suffering with co-existing disorders of mental illness and substance abuse addiction disorders.

(2) To include methadone providers in the quality review process of reviewing methadone consumer services.

(3) To provide mental health and addiction prevention and treatment services to consumers.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest money in the fund in the same manner as other public money may be invested.

(e) Money in the fund at the end of the state fiscal year does not revert to the state general fund.".

Page 1, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 4. IC 12-23-18-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. This chapter expires June 30, ~~2008.~~ **2010.**".

Renumber all SECTIONS consecutively.

(Reference is to ESB 450 as printed March 13, 2007.)

Miller, Chair	Stemler
Sipes	Crouch
Senate Conferees	House Conferees

Roll Call 493: yeas 50, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT
ESB 568–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 568 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 5-10.2-5-42.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 42.4. (a) The pension portion (plus postretirement increases to the pension portion) provided by employer contributions of the monthly benefit payable after December 31, 2007, to a member of the public employees' retirement fund (or to a survivor or beneficiary of a member of the public employees' retirement fund) who retired or was disabled before January 1, 2007, shall be increased by two percent (2%).**

(b) The increases specified in this section:

(1) are based on the date of the member's latest retirement or disability;

(2) do not apply to benefits payable in a lump sum; and

(3) are in addition to any other increase provided by law.

SECTION 2. [EFFECTIVE JULY 1, 2007] **(a) As used in this SECTION, "fund" refers to the public employees' retirement fund established by IC 5-10.3-2-1.**

(b) Not later than December 1, 2007, the fund shall pay the amount determined under subsection (c) to a member of the fund (or to a survivor or beneficiary of the member) who retired or was disabled before January 1, 2007, and who is entitled to receive a monthly benefit on November 1, 2007. The amount shall be paid as a single check and is not an increase in the pension portion of the monthly benefit.

(c) The amount paid under this SECTION to a member of the fund (or to a survivor or beneficiary of a member) who meets the requirements of subsection (b) is determined as follows:

If a Member's Creditable Service Is:	**The Amount of the Check Is:**
At least 5 years, but less than 10 years (only in the case of a member receiving disability retirement benefits)	**$25**
At least 10 years, but less than 20 years	**$75**
At least 20 years, but less than 30 years	**$150**
At least 30 years	**$200**

(d) The creditable service used to determine the amount paid to a member (or to a survivor or beneficiary of the member) under this SECTION is the creditable service that was used to compute the member's retirement benefit under IC 5-10.2-4-4, except that partial years of creditable service may not be used to determine the amount paid under this SECTION.

(e) This SECTION expires December 1, 2007.

(Reference is to ESB 568 as reprinted March 27, 2007.)

Meeks, Chair	Kuzman
Hume	McClain
Senate Conferees	House Conferees

Roll Call 494: yeas 49, nays 0. Report adopted.

REPORT OF THE PRESIDENT PRO TEMPORE

Madam President: I hereby report that Senator Lubbers has been excused from voting on EHB 1722 pursuant to the Report of the Committee on Ethics adopted on March 27, 2007.

LONG

Report adopted.

CONFERENCE COMMITTEE REPORTS

CONFERENCE COMMITTEE REPORT
EHB 1722–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill 1722 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-3.1-27-9.5, AS AMENDED BY P.L.122-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 9.5. **Except as provided in IC 6-3.1-28-11(c),** the total amount of credits allowed under:

(1) section 8 of this chapter;

(2) section 9 of this chapter; and

(3) IC 6-3.1-28;

may not exceed fifty million dollars ($50,000,000) for all taxpayers and all taxable years beginning after December 31, 2004. The corporation shall determine the maximum allowable amount for each type of credit, which must be at least four million dollars ($4,000,000) for each type of credit.

SECTION 2. IC 6-3.1-28-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable

year, the taxpayer may carry over the excess to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit. **A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.**

SECTION 3. IC 6-3.1-28-11, AS AMENDED BY P.L.122-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 11. **(a) As used in this section, "cellulosic ethanol" means ethanol derived solely from lignocellulosic or hemicellulosic matter.**

(b) The corporation shall determine the maximum amount of credits that a taxpayer (or if the person producing the ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section. The total amount of credits allowed a taxpayer (or, if the person producing the ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) under this chapter may not exceed a total of the following amounts for all taxable years:

(1) Two million dollars ($2,000,000) in the case of a taxpayer who produces at least forty million (40,000,000) but less than sixty million (60,000,000) gallons of **grain** ethanol in a taxable year.

(2) Three million dollars ($3,000,000) in the case of a taxpayer who produces at least sixty million (60,000,000) gallons of **grain** ethanol in a taxable year.

(3) Twenty million dollars ($20,000,000) for all taxpayers for all taxable years, in the case of tax credits for a taxpayer who produces at least twenty million (20,000,000) gallons of cellulosic ethanol in a taxable year.

(c) The total amount of tax credits allowed under this chapter for a taxpayer who produces at least twenty million (20,000,000) gallons of cellulosic ethanol is not subject to the maximum amount of tax credits imposed by IC 6-3.1-27-9.5.

(d) A taxpayer who is eligible for a credit under this chapter as a result of producing at least twenty million (20,000,000) gallons of cellulosic ethanol in a taxable year may apply the credit only against the state tax liability attributable to business activity taking place at the Indiana facility at which the cellulosic ethanol was produced.

SECTION 4. IC 6-3.1-29-6, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "integrated coal gasification powerplant" means a facility that satisfies all the following requirements:

(1) The facility is located in Indiana and is a newly constructed energy generating plant.

(2) The facility converts coal into synthesis gas that can be used as a fuel to generate energy **or as a substitute for natural gas.**

(3) The facility uses the synthesis gas as a fuel to generate electric energy **or produces synthesis gas that can be used as a substitute for natural gas.**

(4) The facility is dedicated primarily to **production of electricity or gas for use by energy utilities** serving Indiana retail electric **or gas** utility consumers.

SECTION 5. IC 6-3.1-29-15, AS AMENDED BY P.L.122-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled for a qualified investment in an integrated coal gasification powerplant is equal to the sum of the following:

(1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars ($500,000,000) invested.

(2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars ($500,000,000) only if the facility is dedicated primarily to serving Indiana retail electric **or gas** utility consumers.

(b) Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled for a qualified investment in a fluidized bed combustion technology is equal to the sum of the following:

(1) Seven percent (7%) of the taxpayer's qualified investment for the first five hundred million dollars ($500,000,000) invested.

(2) Three percent (3%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars ($500,000,000).

SECTION 6. IC 6-3.1-29-19, AS AMENDED BY P.L.122-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The maximum tax credit amount that will be allowed for each taxable year.

(4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(5) If the facility is an integrated coal gasification powerplant, a requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a tax credit is available, that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.

(6) For a project involving a qualified investment in ~~a~~ **an integrated** coal gasification powerplant, a requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date that the taxpayer placed the integrated coal gasification powerplant into service.

(7) A requirement that:

(A) one hundred percent (100%) of the coal used:

(i) at the integrated coal gasification powerplant, for a project involving a qualified investment in an integrated

coal gasification powerplant; or

(ii) as fuel in a fluidized bed combustion unit, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is dedicated primarily to serving Indiana retail electric utility consumers;

must be Indiana coal; or

(B) seventy-five percent (75%) of the coal used as fuel in a fluidized bed combustion unit must be Indiana coal, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is not dedicated primarily to serving Indiana retail electric utility consumers.

(8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require:

(A) the construction of the taxpayer's integrated coal gasification powerplant, in the case of a project involving a qualified investment in an integrated coal gasification powerplant; or

(B) the installation of the taxpayer's fluidized bed combustion unit, in the case of a project involving a qualified investment in a fluidized bed combustion technology.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine whether the taxpayer is in compliance with the agreement. If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer.

SECTION 7. IC 6-3.1-29-20.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 20.5. (a) Subject to subsection (c), part or all of the credit to which a taxpayer is entitled under section 15 of this chapter may be assigned by the taxpayer to one (1) or more utilities that have entered into a contract that:**

(1) is approved by the Indiana utility regulatory commission;

(2) provides for the purchase of electricity or substitute natural gas (as defined in IC 8-1-2-42.1) by the utility from the taxpayer; and

(3) expressly allows the assignment of tax credits under this section.

A tax credit assigned to a utility under this section must be applied against the utility's state tax liability in the order set forth in section 14(b) of this chapter.

(b) Notwithstanding section 16 of this chapter, any part of a taxpayer's credit under section 15 of this chapter that is assigned by the taxpayer under this section must be taken in twenty (20) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant or a fluidized bed combustion technology.

(c) The part of a taxpayer's credit under section 15 of this chapter that may be assigned by the taxpayer with respect to any one (1) taxable year is subject to the following:

(1) The total amount of the taxpayer's credit under section 15 of this chapter that may be assigned by the taxpayer with respect to the taxable year may not exceed the product of:

(A) the total credit amount to which the taxpayer is entitled under section 15 of this chapter, divided by twenty (20); multiplied by

(B) the percentage of Indiana coal used in the taxpayer's integrated coal gasification powerplant or fluidized bed combustion technology in the taxable year for which the annual installment of the credit is allowed.

(2) The part of the amount determined under subdivision (1) that may be assigned to any one (1) utility with respect to the taxable year may not exceed the greater of:

(A) the utility's total state tax liability for the taxable year, multiplied by twenty-five percent (25%); or

(B) the utility's total utility receipts tax liability for the taxable year.

(d) Any part of the taxpayer's credit under section 15 of this chapter that is assigned to one (1) or more utilities by a taxpayer under this section with respect to a taxable year may not be claimed by the taxpayer or the taxpayer's shareholders, partners, or members. However, any part of the credit to which the taxpayer is entitled under section 15 of this chapter and that is not assigned by the taxpayer with respect to the taxable year may be taken and applied by the taxpayer, or the taxpayer's shareholders, partners, or members, in accordance with sections 16 and 20 of this chapter.

SECTION 8. IC 6-3.1-31.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]:

Chapter 31.5. Energy Savings Tax Credit

Sec. 1. This chapter applies only to taxable years beginning after December 31, 2008.

Sec. 2. As used in this chapter, "energy star heating and cooling equipment" means heating and cooling equipment that is rated for energy efficiency under the federal energy star program and manufactured in the United States.

Sec. 3. As used in this chapter, "energy star program" refers to the program established by Section 324A of the federal Energy Policy and Conservation Act.

Sec. 4. As used in this chapter, "heating and cooling equipment" means:

(1) a furnace;

(2) a water heater;

(3) central air conditioning;

(4) a room air conditioner; and

(5) a programmable thermostat.

Sec. 5. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 6. As used in this chapter, "small business" has the meaning set forth in IC 4-4-5.2-3.

Sec. 7. As used in this chapter, "state tax liability" means the taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 27-1-18-2 (the insurance premiums tax); and

(3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

Sec. 8. As used in this chapter, "taxpayer" means:

(1) an individual filing a single return;

(2) a married couple filing a joint return; or

(3) a small business;

that has any state tax liability.

Sec. 9. Subject to section 12 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year equal to the lesser of the following:

(1) Twenty percent (20%) of the amount of expenditures for energy star heating and cooling equipment incurred by the taxpayer during the taxable year.

(2) One hundred dollars ($100).

Sec. 10. (a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the credit may be applied, an individual who is a shareholder, partner, or member of the pass through entity is entitled to a credit equal to:

(1) the credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributable income to which the individual is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same expenditures for energy star heating and cooling equipment.

Sec. 11. The amount of a credit claimed under this chapter may not exceed a qualified taxpayer's state tax liability. A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

Sec. 12. A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.

Sec. 13. The total amount of tax credits allowed under this chapter may not exceed one million dollars ($1,000,000) in a state fiscal year.

Sec. 14. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 9. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 42.1. (a) As used in this section, "substitute natural gas" means pipeline quality gas produced by a facility in Indiana that uses a gasification process to convert coal from the geological formation known as the Illinois Basin into a gas capable of being used:**

(1) by a utility to supply gas utility service to end use consumers in Indiana; or

(2) as a fuel used by a utility to produce electric power to supply electric utility service to end use consumers in Indiana.

(b) As used in this section, "customer choice program" means a program under which certain residential and commercial gas consumers located in the service area of a gas utility may:

(1) elect to purchase their gas supply from a provider other than the gas utility in the service area; and

(2) receive transportation service from the gas utility in the service area for the delivery of the gas purchased under subdivision (1) to the consumer's premises.

(c) Subject to IC 8-1-8.9 and notwithstanding any other law, if the commission approves a contract for the purchase of substitute natural gas, or electricity generated in connection with the production of substitute natural gas, by a utility, the commission shall allow the utility to recover the following costs on a timely basis throughout the term of the contract:

(1) All costs incurred in connection with and resulting from the utility's purchases under the contract, including the cost of the substitute natural gas and related costs for generation, transmission, transportation, and storage services.

(2) All costs the utility incurs in obtaining replacement gas if the seller fails to deliver substitute natural gas required to be delivered under the contract, including the price of the gas, and related transportation, storage, and hedging costs, to the extent those costs are not paid by the seller.

(3) Upon petition by the utility, any other costs the commission finds are reasonably necessary in association with the contract.

(d) Any costs recovered under subsection (c):

(1) are in addition to the recovery of other costs; and

(2) shall be made through an adjustment under section 42 of this chapter or another rate adjustment mechanism that allows for comparable timely cost recovery.

(e) If a customer choice program is implemented, expanded, or renewed for a utility during the term of a contract approved by the commission under subsection (c) that has the effect of reducing the utility's sales volumes, a condition of the authorization of that program must be the proportionate assignment of the gas or electric utility's substitute natural gas purchase obligation to the service providers in the customer choice program.

(f) Regardless of changes in market conditions or other circumstances, the commission may not take any action during the term of a contract approved under this section that adversely affects a utility's right to timely recover costs under this section or to otherwise fully recover such costs.

(g) With respect to utilities that are parties to a contract for the purchase of substitute natural gas approved by the commission under this section, the state covenants and agrees that as long as the contract is in effect the state will not limit, alter, or impair a utility's right to recover costs as provided in this section. Notwithstanding any other law, neither the

commission nor any other state agency, political subdivision, or governmental unit may take any action that would have the effect of limiting, altering, or impairing a utility's right to recover costs as provided in this section.

SECTION 10. IC 8-1-2-86.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 86.5. **(a) As used in this section, "four (4) mile area" means the area within four (4) miles of a municipality's corporate boundaries.**

(b) Except as provided in subsection (c), the commission, after notice and hearing, may, by order, determine territorial disputes between all water utilities.

(c) This subsection applies only to a municipality:

(1) having a population of less than seven thousand five hundred (7,500); and

(2) that, as of January 1, 2007, has adopted an ordinance exercising the power to regulate the furnishing of water to the public granted by IC 36-9-2-14 within a four (4) mile area.

The commission may not determine a territorial dispute within a four (4) mile area unless the territorial dispute concerns a geographic area located in more than one (1) four (4) mile area.

SECTION 11. IC 8-1-8.8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The general assembly makes the following findings:

(1) Growth of Indiana's population and economic base has created a need for new energy **production or** generating facilities in Indiana.

(2) The development of a robust and diverse portfolio of energy **production or** generating capacity, including **coal gasification and** the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.

(3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy **production or** generating facilities, **including coal gasification facilities,** at an affordable price.

(4) Certain regions of the state, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy **production or** generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned **or gasified** efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy **production or** generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all of the following:

(1) Indiana's energy **production or** generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy **production or** generating facilities.

(3) The electric transmission ~~system~~ **and gas transportation systems** within Indiana ~~is~~ **are** upgraded to distribute additional amounts of electricity **and gas** more efficiently.

(4) Jobs are created as new energy **production or** generating facilities are built in regions throughout Indiana.

SECTION 12. IC 8-1-8.8-2, AS AMENDED BY P.L.174-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy **production or** generating facilities that employ the use of clean coal technology and that ~~are fueled~~ **produce energy, including substitute natural gas,** primarily ~~by~~ **from** coal or gases, derived from coal from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy **production or** generating plants that are fueled primarily by coal or gases from coal from the ~~geologic~~ **geological** formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy **production or** generating facility.

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(2) Projects to develop alternative energy sources, including renewable energy projects **and coal gasification facilities.**

(3) The purchase of fuels produced by a coal gasification facility.

(4) Projects described in subdivisions (1) through (3) that use coal bed methane.

SECTION 13. IC 8-1-8.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy **production or** generating facility and directly or indirectly reduces **or avoids** airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding **or loan guaranty** under ~~its~~ **an** Innovative Clean Coal Technology **or loan guaranty** program **under the Energy Policy Act of 2005, or any successor program,** and is finally approved for such funding **or loan guaranty** on or after the date of

enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 14. IC 8-1-8.8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used as a fuel to generate energy **or substitute natural gas.**

SECTION 15. IC 8-1-8.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) **or owner of a coal gasification facility** that:

(1) proposes to construct or repower a new energy **production or** generating facility;

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects; or

(4) purchases fuels produced by a coal gasification facility.

SECTION 16. IC 8-1-8.8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in this chapter, "new energy generating facility" refers to a **generation or coal gasification** facility that satisfies all of the following:

(1) The facility ~~is fueled~~ **produces energy** primarily ~~by~~ **from** coal or gases from coal from the ~~geologic~~ **geological** formation known as the Illinois Basin.

(2) The facility is a:

(A) newly constructed or newly repowered energy generation plant; or

(B) newly constructed generation capacity expansion at an existing facility;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean coal and energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, **gas transportation facilities,** and associated equipment employed specifically to serve a new energy generating **or coal gasification** facility.

SECTION 17. IC 8-1-8.8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. As used in this chapter, "qualified utility system property" means any new energy generating **or coal gasification** facility used, or to be used, in whole or in part, ~~on a utility system~~ **by an energy utility** to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

SECTION 18. IC 8-1-8.8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) As used in this chapter, "renewable energy resources" means alternative sources of renewable energy, including the following:

(1) Energy from wind.

(2) Solar energy.

(3) Photovoltaic cells and panels.

(4) Dedicated crops grown for energy production.

(5) Organic waste biomass, **including any of the following organic matter that is available on a renewable basis:**

(A) Agricultural crops.

(B) Agricultural wastes and residues.

(C) Wood and wood wastes, including the following:

(i) Wood residues.

(ii) Forest thinnings.

(iii) Mill residue wood.

(iv) Waste from clean construction and demolition.

(D) Animal wastes.

(E) Aquatic plants.

(6) Hydropower from existing dams.

(7) Fuel cells.

(8) Energy from waste to energy facilities producing steam not used for the production of electricity.

(b) Except for energy described in subsection (a)(8), the term does not include energy from the incinerations, burning, or heating of any of the following:

~~(1) Waste wood.~~

~~(2)~~ **(1)** Tires.

~~(3)~~ **(2)** General household, institutional, commercial, industrial lunchroom, office, or landscape waste.

~~(4) Construction or demolition debris.~~

(c) The term excludes treated or painted lumber.

SECTION 19. IC 8-1-8.8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for new energy **producing and** generating facilities in the form of timely recovery of the costs incurred in connection with the construction, repowering, expansion, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

(1) A schedule for the completion of construction, repowering, or expansion of the new energy generating **or coal gasification** facility for which rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission, **if applicable.**

(3) The amount of capital investment by the eligible business in the new energy generating **or coal gasification** facility.

(4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover the costs associated with qualified utility system property if the eligible business provides substantial documentation that the expected costs associated with qualified utility system property and the schedule for incurring those costs are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels produced by a coal gasification facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

SECTION 20. IC 8-1-8.8-13, AS AMENDED BY P.L.1-2006, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. An eligible business shall file a monthly report with the lieutenant governor stating the following information:

(1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy generating **or coal gasification** facility.

(2) The amount of any fuel produced by a coal gasification facility and purchased by the eligible business during the previous month.

(3) Any other information the lieutenant governor may reasonably require.

SECTION 21. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.9. Financing of Substitute Natural Gas Costs

Sec. 1. (a) As used in this chapter, "assignee" means any individual, corporation, or other legal entity to which an SNG property interest is transferred.

(b) The term includes an assignee of a person described in subsection (a).

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 3. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 4. As used in this chapter, "financing entity" means a person that provides:

(1) equity financing; or

(2) debt financing;

that is secured by an SNG property interest.

Sec. 5. As used in this chapter, "qualified contract" means a contract with a term of at least thirty (30) years for the sale of substitute natural gas to an energy utility.

Sec. 6. As used in this chapter, "qualified cost" means any cost incurred by an energy utility in purchasing substitute natural gas under a qualified contract.

Sec. 7. As used in this chapter, "qualified order" means a final and irrevocable order that:

(1) is issued by the commission; and

(2) approves a qualified contract adopted in accordance with this chapter and IC 8-1-2-42.1.

Sec. 8. As used in this chapter, "substitute natural gas" or "SNG" has the meaning set forth in IC 8-1-2-42.1(a).

Sec. 9. As used in this chapter, "SNG property interest" means the right, title, and interest that:

(1) are held by an energy utility or its assignee;

(2) are created by a qualified order; and

(3) entitle the energy utility or its assignee to recover qualified costs under IC 8-1-2-42.1.

Sec. 10. As used in this chapter, "SNG seller" means any individual, corporation, or other legal entity that engages in the production and sale of substitute natural gas.

Sec. 11. (a) Notwithstanding any other law, the commission may, in accordance with this chapter and IC 8-1-2-42.1, issue a qualified order that:

(1) approves the terms of a qualified contract; and

(2) authorizes the recovery of qualified costs by an energy utility from its customers.

(b) A qualified order issued under this section may not be:

(1) rescinded;

(2) nullified; or

(3) modified;

in such a manner that reduces or otherwise impairs the value of an SNG property interest.

Sec. 12. (a) An SNG property interest, including any right to future purchases of substitute natural gas during the term of a qualified contract, constitutes a present property right.

(b) Qualified costs recovered by an energy utility under a qualified order constitute proceeds of only the SNG property interest that is created by the qualified order.

(c) If the commission issues a qualified order under section 11 of this chapter, the state covenants and agrees, for the benefit of the energy utility and any assignee or financing entity involved, that the state will not take or permit any action that would:

(1) reduce or otherwise impair the value of the SNG property interest created by the qualified order; or

(2) limit, alter, or impair:

(A) the qualified order;

(B) the SNG property interest created by the qualified order; or

(C) qualified costs that are:

(i) imposed on and collected by the energy utility; and

(ii) remitted to the SNG seller;

under the terms of the qualified contract;

until the qualified contract has been performed in full.

Sec. 13. (a) An energy utility may assign an SNG property interest to an assignee, including:

(1) another party to the qualified contract; or

(2) a financing entity.

An assignee may in turn assign an SNG property interest to a financing entity that provides financing to the assignee.

(b) An assignment to a financing entity under this section may be:

(1) an absolute assignment of the SNG property interest; or

(2) an assignment of the SNG property interest as collateral for an obligation owed to the financing entity.

(c) An assignee under this section may enforce the SNG property interest by all applicable legal and equitable means.

(d) Any amounts collected by an energy utility in connection with the sale, transfer, or disposition of substitute natural gas under a qualified contract that forms the basis of an SNG property interest assigned under this section constitute the property of the assignee. Pending the transfer of the SNG property interest to the assignee, the amounts described in this subsection shall be:

(1) segregated by the energy utility; and

(2) held in trust for the benefit of the assignee;

subject to the terms of the qualified contract that forms the basis of the SNG property interest that is being assigned.

Sec. 14. The interests of an assignee in:

(1) an SNG property interest transferred to the assignee under section 13 of this chapter; and

(2) any revenues or collections arising from the SNG property interest transferred;

are not subject to setoff by the energy utility that transferred the SNG property interest, or by any other person, in connection with any bankruptcy proceeding involving the energy utility.

Sec. 15. (a) If an agreement by an energy utility or an assignee to assign an SNG property interest expressly states that the assignment is a sale or is otherwise an absolute transfer:

(1) the resulting transaction:

(A) is a true sale; and

(B) is not a secured transaction; and

(2) title, both legal and equitable, passes to the person to which the SNG property interest is assigned.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of whether:

(1) the assignee has recourse against the assignor; or

(2) the agreement provides for any of the following:

(A) The assignor's retention of an equity interest in the SNG property interest transferred.

(B) Continuing obligations of the energy utility under the qualified contract, including the obligation of the energy utility to serve as the collector of qualified costs.

(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 16. (a) An SNG property interest does not constitute an account or a general intangible under IC 26-1-9.1-102. The creation, granting, perfection, and enforcement of liens and security interests in SNG property interests are governed by this chapter and not by IC 26-1-9.1.

(b) A valid and enforceable lien and security interest in an SNG property interest may be created only by the execution and delivery of a security agreement with a financing entity in connection with the issuance of indebtedness. The security interest attaches automatically from the time that value is received for the indebtedness secured by the SNG property interest and, upon perfection through the filing of notice with the secretary of state:

(1) constitutes a continuously perfected lien and security interest in the SNG property interest and all proceeds of the SNG property interest, whether or not accrued;

(2) has priority in the order of its filing; and

(3) takes precedence over any subsequent judicial lien or other creditor's lien.

If notice is filed with the secretary of state not later than ten (10) days after value is received for the indebtedness, the security interest is perfected retroactive to the date the value was received. If notice is not filed with the secretary of state within ten (10) days after value is received for the indebtedness, the security interest is perfected as of the date of filing.

(c) Transfer of an SNG property interest to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, upon:

(1) the delivery of transfer documents to the assignee; and

(2) the filing of notice with the secretary of state in accordance with subsection (b).

However, if notice of the transfer is not filed with the secretary of state within ten (10) days after the delivery of the transfer documentation, the transfer of the SNG property interest is not perfected against third parties until the notice is filed.

(d) The priority of a lien and security interest under this section is not impaired by either of the following:

(1) A later modification of the qualified order creating the SNG property interest being transferred.

(2) The commingling of other funds with funds collected in connection with a qualified contract. Any other security interest that may apply to funds collected in connection with a qualified contract terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If an SNG property interest has been transferred to an assignee, any proceeds from the SNG property interest shall be held in trust for the assignee.

(e) If a default or termination occurs in connection with a financing secured by an SNG property interest, the financing entity or its representative may foreclose on or otherwise enforce its lien and security interest in the SNG property interest as if the financing entity were a secured party under IC 26-1-9.1. Amounts arising from the qualified contract that is the basis of the SNG property interest shall be transferred to a separate account for the financing entity's benefit and are subject to the financing entity's security interest and lien.

Sec. 17. An assignee or a financing party is not considered an energy utility solely by virtue of its participation in any transaction described in this chapter.

Sec. 18. Any entity that becomes a successor to an energy utility as the result of:

(1) any bankruptcy, reorganization, or other insolvency proceeding;

(2) any merger, sale, or transfer involving the energy utility; or

(3) the operation of law;

or for any other reason, shall perform and satisfy any obligations of the energy utility incurred under this chapter in the same manner and to the same extent as the energy utility would have been obligated to perform, including the obligation to pay to an assignee any funds collected by the energy utility in connection with the SNG property interest assigned to the assignee.

Sec. 19. An SNG seller that is an assignee may contract with the energy utility, in the qualified contract or in another contract, for the performance of services related to the sale of substitute natural gas under the qualified contract, including:

(1) the transportation and distribution of substitute natural gas; and

(2) billing, collection, and other related services;

according to terms and conditions that reasonably compensate the energy utility for its services and adequately secure payment to the SNG seller.

Sec. 20. If an energy utility makes a true sale of an SNG property interest to an SNG seller under section 15 of this chapter, the SNG seller:

(1) retains title to all substitute natural gas distributed by the energy utility to the energy utility's retail end use customers;

(2) is entitled to all amounts collected by the energy utility from its retail end use customers for the distribution of the substitute natural gas, subject to the terms of the qualified contract; and

(3) has the same rights to payments made by the energy utility's retail end use customers as does the energy utility that provides the substitute natural gas to those customers.

SECTION 22. [EFFECTIVE UPON PASSAGE] **The general assembly finds the following:**

(1) The development of coal gasification facilities in Indiana that would use local coal resources for the production of substitute natural gas is in the public interest for purposes of:

(A) reducing the reliance of Indiana energy utilities on gas imports;

(B) mitigating price and supply risk;

(C) improving price stability; and

(D) promoting economic development and job creation.

(2) Coal gasification is encouraged by federal policies intended to increase the energy independence of the United States, including through the availability of tax incentives and loan guarantees.

(3) Indiana has the necessary resources and infrastructure suitable for development of coal gasification facilities.

(4) The receipt of federal incentives for the development, construction, and financing of new coal gasification facilities in Indiana will be enhanced by Indiana energy utilities entering into long term contracts for the purchase of substitute natural gas produced by such facilities.

(5) It is necessary to allow Indiana energy utilities to recover, through rate adjustments for the utility's customers, costs incurred from entering into supply contracts for substitute natural gas in order to promote the creation of such contracts without causing Indiana energy utilities to incur undue risk.

SECTION 23. [EFFECTIVE JANUARY 1, 2008] **IC 6-3.1-28-11, as amended by this act, applies to taxable years beginning after December 31, 2007.**

SECTION 24. **An emergency is declared for this act.**

(Reference is to EHB 1722 as reprinted April 4, 2007.)

Stilwell, Chair	Hershman
Lutz	Hume
House Conferees	Senate Conferees

Roll Call 495: yeas 43, nays 5. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 480–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 480 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-3-1-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 2.5. "Armed forces of the United States" has the meaning set forth in IC 5-9-4-3.**

SECTION 2. IC 6-3-1-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 2.7. "National Guard" has the meaning set forth in IC 5-9-4-4.**

SECTION 3. IC 6-3-1-3.5, AS AMENDED BY P.L.184-2006, SECTION 3, AND AS AMENDED BY P.L.162-2006, SECTION 24, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(3) Subtract one thousand dollars ($1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars ($1,000).

(4) Subtract one thousand dollars ($1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code;

(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:

(A) *for taxable years beginning after December 31, 2004,* one thousand five hundred dollars ($1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code ~~*for taxable years beginning after December 31, 1996*~~ *(as effective January 1, 2004);* and

(B) five hundred dollars ($500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars ($40,000).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract an amount equal to the lesser of:

(A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for

that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or

(B) two thousand dollars ($2,000).

(7) Add an amount equal to the total capital gain portion of a lump sum distribution (as defined in Section 402(e)(4)(D) of the Internal Revenue Code) if the lump sum distribution is received by the individual during the taxable year and if the capital gain portion of the distribution is taxed in the manner provided in Section 402 of the Internal Revenue Code.

(8) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction from adjusted gross income.

(9) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).

(10) Add an amount equal to the deduction allowed under Section 221 of the Internal Revenue Code for married couples filing joint returns if the taxable year began before January 1, 1987.

(11) Add an amount equal to the interest excluded from federal gross income by the individual for the taxable year under Section 128 of the Internal Revenue Code if the taxable year began before January 1, 1985.

(12) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.

(13) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(14) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(15) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.

(16) For taxable years beginning after December 31, 1999, subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse, or both.

(17) Subtract an amount equal to the lesser of:

(A) for a taxable year:

(i) including any part of 2004, the amount determined under subsection (f); and

(ii) beginning after December 31, 2004, two thousand five hundred dollars ($2,500); or

(B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.

(18) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.

(19) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(20) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(21) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars ($25,000).

(22) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(23) Subtract an amount equal to the amount of the taxpayer's qualified military income that was not excluded from the taxpayer's gross income for federal income tax purposes under Section 112 of the Internal Revenue Code.

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.

(3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars ($25,000).

(8) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(9) Add to the extent required by IC 6-3-2-20 the amount of intangible expenses (as defined in IC 6-3-2-20) and any directly related intangible interest expenses (as defined in IC 6-3-2-20) for the taxable year that reduced the corporation's taxable income (as defined in Section 63 of the Internal Revenue Code) for federal income tax purposes.

(c) In the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 or Section 810 of the Internal Revenue Code.

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars ($25,000).

(8) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(d) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars ($25,000).

(8) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(e) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.

(3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or

in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(4) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars ($25,000).

(6) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(f) This subsection applies only to the extent that an individual paid property taxes in 2004 that were imposed for the March 1, 2002, assessment date or the January 15, 2003, assessment date. The maximum amount of the deduction under subsection (a)(17) is equal to the amount determined under STEP FIVE of the following formula:

STEP ONE: Determine the amount of property taxes that the taxpayer paid after December 31, 2003, in the taxable year for property taxes imposed for the March 1, 2002, assessment date and the January 15, 2003, assessment date.

STEP TWO: Determine the amount of property taxes that the taxpayer paid in the taxable year for the March 1, 2003, assessment date and the January 15, 2004, assessment date.

STEP THREE: Determine the result of the STEP ONE amount divided by the STEP TWO amount.

STEP FOUR: Multiply the STEP THREE amount by two thousand five hundred dollars ($2,500).

STEP FIVE: Determine the sum of the STEP FOUR amount and two thousand five hundred dollars ($2,500).

SECTION 4. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 34. "Qualified military income" means wages that are paid:**

(1) to a member of:

(A) a reserve component of the armed forces of the United States; or

(B) the National Guard; and

(2) for any of the following applicable periods, or any combination of the following applicable periods, in a calendar year:

(A) The member's full-time service on involuntary orders in:

(i) a reserve component of the armed forces of the United States; or

(ii) the National Guard.

(B) The period during which the member is mobilized and deployed for full-time service in:

(i) a reserve component of the armed forces of the United States; or

(ii) the National Guard.

(C) The period during which the member's National Guard unit is federalized.

SECTION 5. IC 6-3-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4. **(a)** Each taxable year, an individual, or the individual's surviving spouse, is entitled to an adjusted gross income tax deduction for the first ~~two~~ **five** thousand dollars ~~($2,000)~~ **($5,000)** of income, including retirement or survivor's benefits, received during the taxable year by the individual, or the individual's surviving spouse, for the individual's service in an active or reserve component of the armed forces of the United States, including the army, navy, air force, coast guard, marine corps, merchant marine, Indiana army national guard, or Indiana air national guard. However, a person who is less than sixty (60) years of age on the last day of the person's taxable year, is not, for that taxable year, entitled to a deduction under this section for retirement or survivor's benefits.

(b) An individual whose qualified military income is subtracted from the individual's federal adjusted gross income under IC 6-3-1-3.5(a)(23) for Indiana individual income tax purposes is not, for that taxable year, entitled to a deduction under this section for the individual's qualified military income.

SECTION 6. IC 10-17-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) The position of director of veterans' affairs is established. The governor shall appoint the director for a four (4) year term. However, the term of office of the director terminates when the term of office of the governor terminates or when a successor to the director is appointed and qualified. The director must be:

(1) an honorably discharged veteran who has at least six (6) months **active** service in the armed forces of the United States; and

(2) a citizen of Indiana and a resident of Indiana for at least five (5) years immediately preceding the director's appointment.

(b) The director is entitled to reimbursement for necessary traveling and other expenses.

(c) The governor may remove the director if the governor considers the director guilty of misconduct, incapability, or neglect of duty.

(d) The governor shall appoint an assistant director of veterans' affairs. The assistant director is entitled to receive reimbursement for necessary traveling and other expenses. The assistant director has the same qualifications as the director of veterans' affairs and shall assist the director in carrying out this chapter.

SECTION 7. IC 10-17-1-6, AS AMENDED BY P.L.58-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) The director of veterans' affairs:

(1) is the executive and administrative head of the **Indiana** department of veterans' affairs; and

(2) shall direct and supervise the administrative and technical activities of the department;

subject to the general supervision of the commission.

(b) The duties of the director include the following:

(1) To attend all meetings of the commission and to act as secretary and keep minutes of the commission's proceedings.

(2) To appoint, by and with the consent of the commission, under this chapter and notwithstanding IC 4-15-2, the employees of the department necessary to carry out this chapter and to fix the compensation of the employees. Employees of the department must ~~be:~~

~~(A) honorably discharged veterans who have had at least six (6) months service in the armed forces of the United States and who are citizens of the United States and Indiana; or~~

~~(B) spouses, surviving spouses, parents, or children of an individual described in clause (A).~~

~~An employee must~~ qualify for the job concerned.

(3) To carry out the program for veterans' affairs as directed by the governor and the commission.

(4) To carry on field direction, inspection, and coordination of county and city service officers as provided in this chapter.

(5) To prepare and conduct service officer training schools with the voluntary aid and assistance of the service staffs of the major veterans' organizations.

(6) To maintain an information bulletin service to county and city service officers for the necessary dissemination of material pertaining to all phases of veterans' rehabilitation and service work.

(7) To perform the duties described in IC 10-17-11 for the Indiana state veterans' cemetery.

(8) To perform the duties described in IC 10-17-12 for the military family relief fund.

(9) To establish a program and set guidelines under which a medal of honor awardee may receive compensation when attending and participating in official ceremonies.

SECTION 8. IC 10-17-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. ~~The director of veterans' affairs may act as agent of a veteran under~~ **(a)** A power of attorney authorizing ~~the director to act~~ **action** on behalf of ~~the~~ **a** veteran in obtaining a benefit or an advantage **for a veteran** provided under Indiana law **must run to an authorized agency or individual recognized by the United States Department of Veterans Affairs.**

(b) A rule contrary to this section is void.

SECTION 9. IC 10-17-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) A county executive:

(1) shall designate and may employ a county service officer; and

(2) may employ service officer assistants;

to serve the veterans of the county.

(b) The fiscal body of a city may provide for the employment by the mayor of a city service officer and service officer assistants to serve the veterans of the city.

(c) If the remuneration and expenses of a county or city service officer are paid from the funds of the county or city employing the service officer, the service officer shall:

(1) have the same qualifications and be subject to the same rules as ~~other employees~~ **the director, assistant director, and state service officers** of the **Indiana** department of veterans' affairs; and

(2) serve under the supervision of the director of veterans' affairs.

A service officer assistant must have the same qualifications as an employee described in section 11(b) of this chapter. A rule contrary to this subsection is void.

(d) County and city fiscal bodies may appropriate funds necessary for the purposes described in this section.

SECTION 10. IC 10-17-1-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 11. (a) The following employees of the Indiana department of veterans' affairs must satisfy the requirements set forth in section 5(a) of this chapter:**

(1) State service officers.

(2) Director of the state approving agency.

(3) Program directors of the state approving agency.

(4) Director of the Indiana state veterans' cemetery established by IC 10-17-11-4.

(b) An employee of the Indiana department of veterans' affairs not described in subsection (a) must:

(1) satisfy; or

(2) be the spouse, surviving spouse, parent, or child of a person who satisfies;

the requirements set forth in section 5(a) of this chapter.

SECTION 11. IC 10-17-12-3, AS ADDED BY P.L.58-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this chapter, ~~"commission"~~ **"board"** refers to the **military and** veterans' ~~affairs commission~~ **benefits board** established by ~~IC 10-17-1-3.~~ **IC 10-17-13-4.**

SECTION 12. IC 10-17-12-8, AS ADDED BY P.L.58-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) The military family relief fund is established ~~beginning January 1, 2007,~~ to provide assistance with food, housing, utilities, medical services, basic transportation, and other essential family support expenses that have become difficult to afford for families of Indiana residents who are:

(1) members of:

(A) a reserve component of the armed forces; or

(B) the national guard; and

(2) called to active duty after September 11, 2001.

(b) The ~~department~~ **board** shall expend the money in the fund exclusively to provide grants for assistance as described in subsection (a).

(c) The ~~director~~ **board** shall administer the fund.

SECTION 13. IC 10-17-12-9, AS ADDED BY P.L.58-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The fund consists of the following:

(1) Appropriations made by the general assembly.

(2) Donations to the fund.

(3) Interest as provided in subsection (b).

(4) Money transferred to the fund from other funds.

(5) Annual supplemental fees collected under IC 9-29-5-38.5.

(6) Money from any other source authorized or appropriated for the fund.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same

manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund or to any other fund.

(d) There is annually appropriated to the ~~department~~ **board** for the purposes of this chapter all money in the fund not otherwise appropriated to the ~~department~~ **board** for the purposes of this chapter.

SECTION 14. IC 10-17-12-10, AS ADDED BY P.L.58-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. The ~~commission~~ **board** may adopt rules under IC 4-22-2 for the provision of grants under this chapter. The rules adopted under this section must address the following:

(1) Uniform need determination procedures.

(2) Eligibility criteria.

(3) Application procedures.

(4) Selection procedures.

(5) Coordination with other assistance programs.

(6) Other areas in which the department determines that rules are necessary to ensure the uniform administration of the grant program under this chapter.

SECTION 15. IC 10-17-12-11, AS ADDED BY P.L.58-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. The director or a member of the ~~commission~~ **board** may make a request to the general assembly for an appropriation to the fund.

SECTION 16. IC 10-17-13 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 13. Veterans' Affairs Trust Fund

Sec. 1. As used in this chapter, "board" refers to the military and veterans' benefits board established by section 4 of this chapter.

Sec. 2. As used in this chapter, "fund" refers to the veterans' affairs trust fund established by section 3 of this chapter.

Sec. 3. (a) The veterans' affairs trust fund is established to provide assistance to veterans and their families.

(b) The fund consists of the following:

(1) Appropriations by the general assembly.

(2) Donations, gifts, grants, and bequests to the fund.

(3) Interest and dividends on assets of the funds.

(4) Money transferred to the fund from other funds.

(5) Money from any other source deposited in the fund.

Sec. 4. The military and veterans' benefits board is established.

Sec. 5. The board consists of the following members:

(1) Seven (7) members appointed by the governor. The governor shall consider the following when making appointments under this subdivision:

(A) Membership in:

(i) a veterans association established under IC 10-18-6; or

(ii) a veterans organization listed in IC 10-18-8-1.

(B) Service in the armed forces of the United States (as defined in IC 5-9-4-3) or the national guard (as defined in IC 5-9-4-4).

(C) Experience in education, including higher education, vocational education, or adult education.

(D) Experience in investment banking or finance.

The governor shall designate one (1) member appointed under this subdivision to serve as chairperson of the board.

(2) The director of veterans' affairs appointed under IC 10-17-1-5 or the director's designee.

(3) The adjutant general of the military department of the state appointed under IC 10-16-2-6 or the adjutant general's designee.

(4) Four (4) members of the general assembly appointed as follows:

(A) Two (2) members of the senate, one (1) from each political party, appointed by the president pro tempore of the senate with advice from the minority leader of the senate.

(B) Two (2) members of the house of representatives, one (1) from each political party, appointed by the speaker of the house of representatives with advice from the minority leader of the house of representatives.

Members appointed under this subdivision are nonvoting, advisory members and must serve on a standing committee of the senate or house of representatives that has subject matter jurisdiction over military and veterans affairs.

Sec. 6. The board shall meet at least quarterly at the call of the chairperson of the board.

Sec. 7. Five (5) voting members of the board constitute a quorum. The affirmative vote of five (5) members of the board is necessary for the board to take action.

Sec. 8. (a) The term of a board member begins on the later of the following:

(1) The day the term of the member whom the individual is appointed to succeed expires.

(2) The day the member is appointed.

(b) The term of a member expires on the later of the following:

(1) The day a successor is appointed.

(2) July 1 of the year following the year in which the member is appointed.

However, a member serves at the pleasure of the appointing authority.

(c) An appointing authority may reappoint a member for a new term.

(d) An appointing authority shall appoint an individual to fill a vacancy on the board.

Sec. 9. (a) Each member of the board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the board who is a state employee but who is not a member of the general assembly is entitled to

reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each member of the board who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

Sec. 10. (a) The board shall manage and develop the fund and the assets of the fund.

(b) The board shall do the following:

(1) Establish a policy for the investment of the assets of the fund. In establishing a policy under this subdivision, the board shall:

(A) consider the immediate needs of veterans and their families to the extent those needs are not addressed by the military family relief fund established by IC 10-17-12-8; and

(B) have as its long term goal creating a self sustaining fund that is not dependent on legislative sources of funding.

(2) Acquire money for the fund through the solicitation of private or public donations and other revenue producing activities.

(3) Perform other tasks consistent with prudent management and development of the fund.

Sec. 11. (a) Subject to the investment policy of the board established under section 10 of this chapter, the treasurer of state shall administer the fund and invest the money in the fund.

(b) The expenses of administering the fund and this chapter shall be paid from the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public trust funds are invested. Interest that accrues from these investments shall be deposited in the fund.

Sec. 12. Money in the fund at the end of a state fiscal year does not revert to the state general fund or any other fund.

Sec. 13. Before October 1 of each year, the board shall report in an electronic format under IC 5-14-6 to the general assembly concerning the fund.

Sec. 14. The board shall adopt rules under IC 4-22-2 to do the following:

(1) Establish or designate programs, including existing programs administered by state agencies for the benefit of active duty military personnel, veterans, and their families, to be funded by the fund. The board shall consider the following needs of veterans and their families in establishing programs under this subdivision:

(A) Education.

(B) Economic assistance, including grants and loans.

(C) Health and medical care.

(D) Housing and transportation needs.

(E) Employment and workforce issues.

(F) Any other issue the board determines is appropriate.

(2) Determine eligibility and application procedures for programs described in subdivision (1).

(3) Otherwise implement this chapter.

SECTION 17. IC 20-20-7-3, AS ADDED BY P.L.1-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this chapter, "eligible veteran" refers to an individual who has the following qualifications:

(1) Served as a member of the armed forces of the United States at any time during at least one (1) of the following periods:

(A) Beginning April 6, 1917, and ending November 11, 1918 (World War I).

(B) Beginning December 7, 1941, and ending December 31, 1946 (World War II).

(C) Beginning June 27, 1950, and ending January 31, 1955 (Korean Conflict).

(D) Beginning August 5, 1964, and ending May 7, 1975 (Vietnam Conflict).

(2) Before the military service described in subdivision (1):

(A) attended a public or nonpublic high school in Indiana; and

(B) was a student in good standing at the high school described in clause (A), to the satisfaction of the department of veterans' affairs.

(3) Did not graduate or receive a diploma because of leaving the high school described in subdivision (2) for the military service described in subdivision (1).

(4) Was honorably discharged from the armed forces of the United States.

SECTION 18. IC 20-28-2-6, AS AMENDED BY SEA 526-2007, SECTION 203, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Subject to subsection (c) and in addition to the powers and duties set forth in IC 20-20-22 or this article, the advisory board may adopt rules under IC 4-22-2 to do the following:

(1) Set standards for teacher licensing and for the administration of a professional licensing and certification process by the department.

(2) Approve or disapprove teacher preparation programs.

(3) Set fees to be charged in connection with teacher licensing.

(4) Suspend, revoke, or reinstate teacher licenses.

(5) Enter into agreements with other states to acquire reciprocal approval of teacher preparation programs.

(6) Set standards for teacher licensing concerning new subjects of study.

(7) Evaluate work experience and military service concerning postsecondary education and experience equivalency.

(8) Perform any other action that:

(A) relates to the improvement of instruction in the public schools through teacher education and professional development through continuing education; and

(B) attracts qualified candidates for teacher education from among the high school graduates of Indiana.

(9) Set standards for endorsement of school psychologists as independent practice school psychologists under IC 20-28-12.

(b) Notwithstanding subsection (a)(1), an individual is entitled to one (1) year of occupational experience for purposes of obtaining an occupational specialist certificate under this article for each year the individual holds a license under IC 25-8-6.

(c) Before publishing notice of the intent to adopt a rule under IC 4-22-2, the advisory board must submit the proposed rule to the state superintendent for approval. If the state superintendent approves the rule, the advisory board may publish notice of the intent to adopt the rule. If the state superintendent does not approve the rule, the advisory board may not publish notice of the intent to adopt the rule.

(d) The advisory board may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to establish procedures to expedite the issuance, renewal, or reinstatement under this article of a license or certificate of a person whose spouse serves on active duty (as defined in IC 25-1-12-2) and is assigned to a duty station in Indiana. Before publishing notice of the intent to adopt a permanent rule under IC 4-22-2, the advisory board must comply with subsection (c).

SECTION 19. IC 21-13-1-5, AS ADDED BY SEA 526-2007, SECTION 254, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. "Fund":

(1) for purposes of IC 21-13-2, refers to the minority teacher or special education services scholarship fund established by IC 21-13-2-1;

(2) for purposes of IC 21-13-3, refers to the nursing scholarship fund established by IC 21-13-3-1; ~~and~~

(3) for purposes of IC 21-13-4, refers to the National Guard tuition supplement program fund established by IC 21-13-4-1; **and**

(4) for purposes of IC 21-13-5, refers to the National Guard scholarship extension fund established by IC 21-13-5-1.

SECTION 20. IC 21-13-1-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. "Scholarship extension applicant", for purposes of IC 21-13-5, means a person who:**

(1) is a former member of the Indiana National Guard who was called to active duty at least one (1) time while a member of the Indiana National Guard;

(2) was a scholarship applicant when the person was called to active duty;

(3) is a resident of Indiana;

(4) has been accepted to attend a state educational institution as a full-time or part-time student; and

(5) according to commission requirements, has timely filed an application for any federal and state financial assistance available to the person to attend a state educational institution.

SECTION 21. IC 21-13-5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 5. National Guard Scholarship Extension Program

Sec. 1. (a) The National Guard scholarship extension fund is established to provide the financial resources necessary to award tuition scholarships to scholarship extension applicants.

(b) The commission shall administer the fund. The expenses of administering the fund shall be paid from money in the fund.

(c) The fund consists of money transferred to the fund from the National Guard scholarship program reserves.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 2. Money in the National Guard scholarship extension fund shall be used to provide annual scholarships to scholarship extension applicants in an amount determined by the commission.

Sec. 3. A scholarship extension applicant shall apply for a tuition scholarship under this chapter not later than one (1) year after the scholarship extension applicant ceases to be a member of the National Guard.

Sec. 4. A scholarship extension applicant is eligible for a tuition scholarship under this chapter for a period not to exceed the period the scholarship extension applicant served on active duty as a member of the National Guard.

Sec. 5. The commission shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 22. IC 21-14-1-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.3. For purposes of IC 21-14-9, "active duty" means full-time service in the armed forces of the United States that exceeds thirty (30) days in a calendar year.**

SECTION 23. IC 21-14-1-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.7. For purposes of IC 21-14-9, "armed forces of the United States" means the following:**

(1) The United States Air Force.

(2) The United States Army.

(3) The United States Coast Guard.

(4) The United States Marine Corps.

(5) The United States Navy.

SECTION 24. IC 21-14-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 9. Resident Tuition for Active Duty Military Personnel

Sec. 1. Notwithstanding any other statute, a person who:

(1) is a nonresident of Indiana;

(2) serves on active duty;

(3) is stationed in Indiana; and

(4) attends a state educational institution;

is eligible to pay the resident tuition rate determined by the state educational institution for courses taken by the person while the person continues to satisfy the criteria set forth in subdivisions (2) and (3).

Sec. 2. A dependent of a person described in section 1 of this chapter is eligible to pay the resident tuition rate determined by the state educational institution for courses taken by the dependent for the duration of the dependent's enrollment at the state educational institution.

SECTION 25. IC 25-1-9-20 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2007]: **Sec. 20. The board may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to establish procedures to expedite the issuance or renewal of a:**

(1) license;

(2) certificate;

(3) registration; or

(4) permit;

of a person whose spouse serves on active duty (as defined in IC 25-1-12-2) and is assigned to a duty station in Indiana.

SECTION 26. IC 25-1-11-21 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21. The board may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to establish procedures to expedite the issuance or renewal of a:**

(1) license;

(2) certificate;

(3) registration; or

(4) permit;

of a person whose spouse serves on active duty (as defined in IC 25-1-12-2) and is assigned to a duty station in Indiana.

SECTION 27. [EFFECTIVE JULY 1, 2007] **IC 6-3-1-3.5 and IC 6-3-2-4, both as amended by this act, apply to taxable years beginning after December 31, 2007.**

SECTION 28. [EFFECTIVE JULY 1, 2007] **IC 10-17-1-5 and IC 10-17-1-9, both as amended by this act, and IC 10-17-1-11, as added by this act, apply to employees who begin employment with:**

(1) the Indiana department of veterans' affairs; or

(2) a county or a city under IC 10-17-1-9, as amended by this act;

as applicable, after June 30, 2007.

SECTION 29. [EFFECTIVE JULY 1, 2007] **(a) Notwithstanding the amendment of IC 10-17-12-10 by this act, rules adopted by the veterans' affairs commission under IC 4-22-2 and IC 10-17-12-10, before its amendment by this act, for the provision of grants under IC 10-17-12 shall remain in effect until the later of:**

(1) the date on which the military and veterans' benefits board established by IC 10-17-13-4, as added by this act, adopts rules under IC 4-22-2 and IC 10-17-12-10, as amended by this act; or

(2) July 1, 2008.

(b) This SECTION expires July 1, 2008.

SECTION 30. [EFFECTIVE UPON PASSAGE] **(a) For purposes of IC 21-13-5, as added by this act, "fund" refers to the National Guard scholarship extension fund established by IC 21-13-5-1.**

(b) This SECTION expires July 1, 2007.

SECTION 31. [EFFECTIVE UPON PASSAGE] **(a) On June 30, 2007, the state student assistance commission shall transfer the National Guard scholarship program reserves to the National Guard scholarship extension fund established by IC 21-13-5-1, as added by this act.**

(b) This SECTION expires December 31, 2007.

SECTION 32. **An emergency is declared for this act.**

(Reference is to ESB 480 as reprinted April 10, 2007.)

Wyss, Chair	Reske
Rogers	McClain
Senate Conferees	House Conferees

Roll Call 496: yeas 49, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 502–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 502 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-2.5-1-11.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 11.3. "Ancillary services" means services that are associated with or incidental to the provision of telecommunication services, including the following:**

(1) Detailed telecommunications billing.

(2) Directory assistance.

(3) Vertical services.

(4) Voice mail services.

SECTION 2. IC 6-2.5-1-20.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 20.3. "Intrastate telecommunications service" means a telecommunications service that originates in a particular state, territory, or possession of the United States and terminates in that same state, territory, or possession.**

SECTION 3. IC 6-2.5-1-22.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 22.3. "Prepaid calling service" has the meaning set forth in IC 6-2.5-12-11.**

SECTION 4. IC 6-2.5-1-22.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 22.4. "Prepaid wireless calling service" means a telecommunications service that:**

(1) provides the right to use mobile wireless service as well as other nontelecommunications services, including:

(A) the download of digital products delivered electronically; and

(B) content and ancillary services;

(2) must be paid for in advance; and

(3) is sold in predetermined units or dollars of which the number declines with use in a known amount.

SECTION 5. IC 6-2.5-1-27.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 27.5. (a)**

"Telecommunication services" means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

(b) The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service:

(1) is referred to as voice over Internet protocol services; or

(2) is classified by the Federal Communications Commission as enhanced or value added.

(c) The term does not include the following:

(1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.

(2) Installation or maintenance of wiring or equipment on a customer's premises.

(3) Tangible personal property.

(4) Advertising, including but not limited to directory advertising.

(5) Billing and collection services provided to third parties.

(6) Internet access service.

(7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3.

(8) Ancillary services.

(9) Digital products delivered electronically, including the following:

(A) Software.

(B) Music.

(C) Video.

(D) Reading materials.

(E) Ring tones.

SECTION 6. IC 6-2.5-1-29 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 29. "Value added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.**

SECTION 7. IC 6-2.5-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 6. ~~(a) As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.~~

~~(b)~~ **(a)** A person is a retail merchant making a retail transaction when the person:

(1) furnishes or sells an intrastate telecommunication service; and

(2) receives gross retail income from billings or statements rendered to customers.

~~(c)~~ **(b)** Notwithstanding subsection ~~(b),~~ **(a),** a person is not a retail merchant making a retail transaction when:

~~(1) the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication services described in subsection (a);~~

~~(2)~~ **(1)** the person furnishes or sells ~~the~~ telecommunication services ~~described in subsection (a)~~ to another person described in this section or in section 5 of this chapter;

~~(3)~~ **(2)** the person furnishes telecommunications services ~~described in subsection (a)~~ to another person who is ~~using a prepaid telephone calling card or prepaid telephone authorization number~~ **providing prepaid calling services or prepaid wireless calling services in a retail transaction to customers who access the services through the use of an access or authorization number or card as** described in section 13 of this chapter; ~~or~~

~~(4)~~ **(3)** the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15); **or**

(4) the person furnishes or sells value added nonvoice data services in a retail transaction to a customer.

~~(d)~~ **(c)** Subject to IC 6-2.5-12 and IC 6-8.1-15, and notwithstanding subsections (a) **and** (b), ~~and (c),~~ if charges for telecommunication services, **ancillary services, Internet access, audio services, or video services that are** not taxable under this article are aggregated with and not separately stated from charges subject to taxation under this article, the charges for nontaxable telecommunication services, **ancillary services, Internet access, audio services, or video services** are subject to taxation unless the service provider can reasonably identify the charges not subject to the tax from the service provider's books and records kept in the regular course of business.

SECTION 8. IC 6-2.5-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 8. (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

(1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;

(2) organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and

(3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.

(d) A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains:

(1) a fully completed exemption certificate; or

(2) the relevant data to complete the exemption certificate; within ninety (90) days after the sale.

(e) If a seller has accepted an incomplete exemption certificate under subsection (a) and the department requests that the seller substantiate the exemption, within one hundred twenty (120) days after the department makes the request the seller shall:

(1) obtain a fully completed exemption certificate; or

(2) prove by other means that the transaction was not subject to state gross retail or use tax.

SECTION 9. IC 6-2.5-11-10, AS AMENDED BY P.L.195-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

(d) A certified service provider or a seller using a certified automated system that obtains a certification from the department is not liable for sales or use tax collection errors that result from reliance on the department's certification. If the department determines that an item or transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or the seller using a certified automated system of the incorrect classification. The certified service provider or the seller using a certified automated system must revise the incorrect classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider or the seller using a certified automated system is liable for failure to collect the correct amount of sales or use tax due and owing.

~~(d)~~ **(e)** The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.

SECTION 10. IC 6-2.5-11-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 11. (a) This section applies only to transactions occurring after December 31, 2008.**

(b) A purchaser is relieved from liability for penalties imposed under IC 6-8.1-10-2.1 for failure to pay the amount of tax due if any of the following occurs:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by the department regarding any of the following:

(A) Tax rates.

(B) Boundaries.

(C) Taxing jurisdiction assignments.

(D) The taxability matrix.

(2) A purchaser with a direct pay permit relied on erroneous data provided by the department regarding any of the following:

(A) Tax rates.

(B) Boundaries.

(C) Taxing jurisdiction assignments.

(D) The taxability matrix.

(3) A purchaser relied on erroneous data in the taxability matrix provided by the department.

(c) The department shall relieve a purchaser from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (b); however, the relief is limited to tax and interest attributable to the department's erroneous classification in the taxability matrix of terms:

(1) included as taxable or exempt;

(2) included in the sales price;

(3) excluded from the sales price;

(4) included in a definition; or

(5) excluded from a definition.

SECTION 11. IC 6-2.5-11-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 12. (a) The department shall review software submitted to the governing board for certification as a certified automated system. The review is to determine that the program adequately classifies product based exemptions granted under IC 6-2.5-5. Upon satisfactory completion of the review, the department shall certify to the governing board the department's acceptance of the**

classifications made by the system.

(b) The governing board and the member states are not responsible for classification of an item or a transaction within the product based exemptions certified by the department. The relief from liability provided in this section is not available to a certified service provider or Model 2 seller that has incorrectly classified an item or a transaction into a product based exemption certified by the department. This subsection does not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

(c) If the department determines that an item or a transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or Model 2 seller of the incorrect classification. The certified service provider or Model 2 seller must revise the classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider or Model 2 seller is liable for failure to collect the correct amount of sales or use tax due and owing.

SECTION 12. IC 6-2.5-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 10. As used in this chapter, "post paid calling service" means the telecommunications service obtained by making a payment on a call by call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post paid calling service includes a telecommunications service, **except a prepaid wireless calling service,** that would be a prepaid calling service except it is not exclusively a telecommunications service.

SECTION 13. IC 6-2.5-12-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 11.5. As used in this chapter, "prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services, including the download of content, digital products delivered electronically, and ancillary services, which:**

(1) must be paid for in advance; and

(2) are sold in predetermined units or dollars, the balance of which declines with use in a known amount.

SECTION 14. IC 6-2.5-12-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 16. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services, other than air to ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act and IC 6-8.1-15.

(2) A sale of post paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(A) the seller's telecommunications system; or

(B) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of prepaid calling service **or a sale of prepaid wireless calling service** is sourced in the following manner:

(A) When the service is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(B) When the service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(C) When clauses (A) and (B) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(D) When clauses (A) through (C) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(E) When clauses (A) through (D) do not apply, including the circumstance in which the seller is without sufficient information to apply the previous clauses, the location will be determined by either:

(i) the address from which tangible personal property was shipped, from which any digital good or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold); or

(ii) in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location associated with the mobile telephone number.

(4) A sale of a private communications service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one (1) jurisdiction or level of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

SECTION 15. IC 6-2.5-13-1, AS AMENDED BY P.L.153-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 1. (a) As used in this section, the terms "receive" and "receipt" mean:

(1) taking possession of tangible personal property;

(2) making first use of services; or

(3) taking possession or making first use of digital goods;

whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(b) This section:

(1) applies regardless of the characterization of a product as tangible personal property, a digital good, or a service;

(2) applies only to the determination of a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product; and

(3) does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(c) This section does not apply to sales or use taxes levied on the following:

(1) The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of this article.

(2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g). The retail sale of these items shall be sourced according to the requirements of this article, and the lease or rental of these items must be sourced according to subsection (f).

(3) Telecommunications services, ~~as set forth in IC 6-2.5-12,~~ **ancillary services, and Internet access service** shall be sourced in accordance with IC 6-2.5-12.

(d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(3) When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(e) The lease or rental of tangible personal property, other than property identified in subsection (f) or (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (d). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or an accelerated basis, or on the acquisition of property for lease.

(f) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(g) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance

with the provisions of subsection (d), notwithstanding the exclusion of lease or rental in subsection (d). As used in this subsection, "transportation equipment" means any of the following:

(1) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) registered through the International Registration Plan; and

(B) operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3).

(h) This subsection applies to retail sales of floral products that occur before January 1, 2008. Notwithstanding subsection (d), a retail sale of floral products in which a florist or floral business:

(1) takes a floral order from a purchaser; and

(2) transmits the floral order by telegraph, telephone, or other means of communication to another florist or floral business for delivery;

is sourced to the location of the florist or floral business that originally takes the floral order from the purchaser.

SECTION 16. IC 6-2.5-13-2 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 17. [EFFECTIVE JULY 1, 2007] **(a) As used in this SECTION, "associate member" has the meaning set forth in bylaw 13(c) of the bylaws of the Multistate Tax Commission, as amended through October 17, 2002.**

(b) As used in this SECTION, "biennium" means a period consisting of two (2) consecutive state fiscal years beginning on July 1 of an odd-numbered year.

(c) As used in this SECTION, "department" refers to the department of state revenue established by IC 6-8.1-2-1.

(d) The governor and the commissioner of the department shall take the steps necessary for Indiana to become an associate member of the Multistate Tax Commission (444 North Capital Street, NW, Suite 425, Washington, DC 20001).

(e) For a biennium beginning after January 1, 2009, the department shall make a separate request for the cost of membership in the Multistate Tax Commission as part of the department's biennial budget request.

SECTION 18. **An emergency is declared for this act.**

(Reference is to ESB 502 as reprinted March 16, 2007.)

Kenley, Chair	Kuzman
Mrvan	Espich
Senate Conferees	House Conferees

Roll Call 497: yeas 48, nays 0. Report adopted.

CONFERENCE COMMITTEE REPORT

ESB 561–1

Madam President: Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill 561 respectfully reports that said two committees have conferred and agreed as follows to wit: that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Page 3, delete lines 6 through 27.

Renumber all SECTIONS consecutively.

(Reference is to ESB 561 as reprinted April 10, 2007.)

Mishler, Chair	Lawson
Deig	Wolkins
Senate Conferees	House Conferees

Roll Call 498: yeas 48, nays 0. Report adopted.

MOTIONS TO CONCUR IN HOUSE AMENDMENTS

SENATE MOTION

Madam President: I move that the Senate do concur with the House amendments to Engrossed Senate Bill 211.

FORD

Roll Call 499: yeas 48, nays 0. Motion prevailed.

MESSAGE FROM THE PRESIDENT PRO TEMPORE OF THE INDIANA STATE SENATE

Madam President and Members of the Senate: I have on April 27, 2007, signed Senate Enrolled Acts: 286, 94, 267, 192, 220, 232, 329, 345, and 534.

DAVID C. LONG
President Pro Tempore

SENATE MOTION

Madam President: I move we adjourn until 10:00 a.m., Saturday, April 28, 2007.

LONG

Motion prevailed.

The Senate adjourned at 7:27 p.m.

MARY C. MENDEL	REBECCA S. SKILLMAN
Secretary of the Senate	President of the Senate